96/46

FBI OVERSIGHT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST AND SECOND SESSION

ON

FBI OVERSIGHT

MARCH 8, 15, 21, 27, 1979, MARCH 4, 10, AND 17, 1980

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FBI OVERSIGHT

THURSDAY, MARCH 8, 1979

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 2226, Rayburn House Office Building; the Honorable Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Drinan, Matsui, and Ashbrook.

Staff present: Thomas P. Breen, counsel; Catherine LeRoy and Janice Cooper, assistant counsel; and Roscoe B. Starek III, assistant counsel.

Mr. EDWARDS. The subcommittee will come to order.

We welcome this morning the gentleman from Ohio, the new, and I am sure, valued member of the subcommittee, Mr. Ashbrook.

Mr. Ashbrook, we are delighted to have you with us.

Mr. ASHBROOK. Thank you. I am delighted to be here.

Mr. EDWARDS. Today we begin the subcommittee's first Federal Bureau of Investigation oversight hearing of the 96th Congress. It is, however, the continuation of several years of this subcommittee's efforts to assure that the Federal Bureau of Investigation is carrying out its Federal law enforcement responsibilities in an efficient and effective manner—and perhaps more important, in a manner consistent with the laws of this land and the Constitution.

One of the most controversial programs within the FBI's jurisdiction has been its domestic security/terrorism program. This subcommittee has taken an interest in the evolution of this program ever since it requested the GAO to audit domestic security in 1973. As a result of our efforts and those of other congressional committees, the GAO, the Justice Department, and the FBI itself, vast improvements have been made. The FBI now concentrates its efforts in this area of investigation of terrorist activities and leaders of terrorist organizations. From a total of nearly 20,000 investigative matters in the 10 field offices surveyed by GAO in 1974, the FBI's caseload has dropped to only a handful. The investigations are now closely tied to Federal violations.

The focus of our hearing this morning is going to be somewhat different, however, from what it's been in the past. Today we plan to approach our task from the point of view of our upcoming authorization responsibility. We would like to know how the money authorized for this program is being spent, how the program operates, what the program has accomplished—in other words, how the FBI actually goes about coping with terrorist cases and how well it is doing its job.

Last year the Congress authorized an additional $2 million to the Bureau's terrorist program. In its submission to the committee this year, the Bureau admitted it did not need this money. There was a substantial shortfall both in positions and in dollars. We should explore the reasons for this shortfall in an effort to improve the Bureau's management of its resources, and the Congress authorization capabilities.

We are pleased to have as our witness today, Mr. Donald W. Moore, Jr., Assistant Director, Federal Bureau of Investigation.

Mr. Moore, would you be so kind as to introduce your colleagues with you and then unless Mr. Ashbrook has a preliminary remark—do you, Mr. Ashbrook?

Mr. ASHBROOK. No, sir.

Mr. EDWARDS. You can proceed.

TESTIMONY OF DONALD W. MOORE, JR., ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ACCOMPANIED BY L. CLYDE GROOVER, JR., SEBASTIAN S. MIGNOSA, ROBERT SATKOWSKI, AND PAUL NUGENT

Mr. MOORE. To your right would be Paul Nugent, Bob Satkowski, Seb Mignosa, and Clyde Groover. I do have a prepared statement, Mr. Chairman, that I would like to read for the record, if I may.

Mr. EDWARDS. Yes. Please continue.

Mr. MOORE. The phenomenon of terrorism mirrors the mobility and complexity of modern society which transcends both national and continental borders. The functions of the terrorism program are formulated to assure an effective and timely response to a terrorist incident. Since the majority of all terrorist activities fall within the investigative responsibility of the FBI, the terrorism program must be in a position to respond to terrorist incidents.

The mission of the terrorism program is to detect, prevent, and/or react to unlawful, violent activities of individuals or groups whose intent is either overthrow the Government; interfere with the activities of a foreign government in the United States; substantially impair the functioning of the Federal Government, a State government, or interstate commerce; or deprive Americans of their civil rights guaranteed under the Constitution.

The approach used to fulfill this mission is a two-pronged investigative effort: The preventive phase, which consists of detection, identification, and collection of evidence for prosecution of terrorists and their groups who have the propensity, inclination, and capacity to engage in terrorist acts; and the reactive phase, which consists of a coordinated preplanning to insure an effective and timely response to a terrorist act through crisis management and intensive investigative effort.

Terrorist acts continue to be performed in the United States as evidenced by approximately 100 terrorist bombings in 2 of the last 3 years. The number of terrorist bombings for 1978 totaled 52. These activities of terrorists are violent, criminal acts aimed indiscriminately with no regard to innocent victims and are deliberately calculated to yield maximum physical and emotional disruption.

The first function of the FBI's terrorism program, domestic terrorist investigations constitute the preventive phase of this program, consisting of detection, identification, and collection of evidence for prosecution of these terrorists and their groups who have the propensity, inclination, and capacity to engage in terrorist acts. Within this function are investigations conducted according to the Atttorney General's guidelines for domestic security investigations.

The second phase or activity of this program is the reactive phase of this program, consisting of criminal investigations conducted concerning bombing matters, protection of foreign officials and official guests of the United States, neutrality matters, sabotage, sedition, treason, Atomic Energy Act matters—including extortions by threat of a nuclear device, espionage, passport and visa violations, and false identify matters.

Management direction, which consists of program management and crisis management within the criminal headquarters coordination function, is the third functional area of the total terrorism program. This function is accomplished through the initiation and management of investigative activity occurring within this program and coordination of investigation requiring, by their nature and scope, immediate direction and concurrence of investigative effort.

The Terrorist Research and Bomb Data Center is the fourth functional element of the total terrorism program. This activity is accomplished by providing up-to-date statistical and technical information and training to law enforcement agencies involved with investigating improvised explosive devices, as well as an assessment of domestic terrorist incidents as an aid in investigative activity.

These four functional areas provide a unified response to terrorist activities. Also available within the framework of response to a terrorist incident is the special operations and research staff (SOARS), which is a group of special agents who are trained in psychology and criminology and well versed in the practical operations of apprehension. Their function is to accumulate the facts concerning terrorist incidents, make a study of them, and through papers, articles, and seminars, offer through their conclusions ways of dealing with terrorism. SOARS is available to the FBI and local law enforcement for onsite consultation during a terrorist incident. SOARS also conducts training sessions for FBI personnel and local law enforcement.

Also available are special weapons and tactics (SWAT), teams which consist of individuals trained in the use of military-type equipment, weapons, and tactics, for use in a situation where a siege or hostage incident, where usual law enforcement weapons and apprehension tactics would not be effective. This technique is continually reviewed to update its capability in dealing with today's sophisticated terrorists. The SWAT concept, like other FBI responses to terrorism, is shared with local law enforcement through training seminars.

The FBI's terrorism program efforts continue to be directed toward strengthening our reactive capabilities with preparedness as an objective.

The FBI is undertaking its role in meeting the terrorist challenge with both determination and innovation. Investigations of the lawless acts of domestic terrorists are being aggressively pursued and the FBI will continue to devote its resources toward the task of identifying, locating, and separating the terrorist from law-abiding citizens.

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Because of the possibility of terrorist activities in international events, the FBI has begun planning and coordination of security measures for the 1979 Pan American Games to be held in San Juan, Puerto Rico. These operations include conferences on both the headquarters and field office levels to ascertain possible problem areas in order to maintain an alert responsive posture for terrorist activities. Similar attention is being directed at the 1980 Winter Olympics in Lake Placid, N.Y., to insure that terrorist groups do not use this occasion as a means to seek world notoriety for their causes. In this regard, the FBI is part of a Federal Coordinating Committee and is working closely with the New York State Police concerning law enforcement responsibility in this event. Preparations have involved not only periodic conferences at the field and headquarters levels, but also specialized training for special agents at that location. Throughout this event, the FBI will maintain an operational center at Lake Placid.

The terrorism program, through a multiyear plan for upcoming fiscal years, includes the exploration of a multination coordination effort to combat terrorism. In this regard, the FBI, through representatives of the terrorism program has exchanged information concerning terrorism with friendly foreign governments with the information being well received and reciprocal information furnished. Through this method of cooperation, as well as attendance at international conferences and symposiums, and the hosting of symposiums on terrorism at the FBI Academy, the lessons learned from terrorist acts throughout the world will be utilized to enhance the FBI's ability to deal with terrorist acts taking place in the United States. In this context, lessons learned in the United States will be shared with representatives of friendly governments to better their capabilities in dealing the terrorist incidents.

The FBI reaction to a terrorist incident has many facets. All are coordinated in a unified effort should the preventive phase fail. We should not, of course, lose sight of the preventive phase. The FBI would be most seriously hindered in carrying out its responsibilities in combating terrorism should its ability to investigate potential domestic or foreign terrorist groups be further limited or eliminated. As long as this ability is not hindered, the FBI is confident that it can contain the terrorist threat in the United States.

The management of this program is a necessary adjunct to the U.S. Government being in a position to respond to terrorist acts efficiently and effectively and to anticipate the occurence of these acts to preclude disruption of the functioning of all levels of government, prevention of civil disorders, and possible loss of life.

That concluded my statement, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Moore. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you Mr. Chairman and thank you, Mr. Moore.

I read your statement last night and I know that apparently because of time elements, you didn't get into specifics, but I wonder if you would want to talk to one of the precise questions in front of the subcommittee, that last year the Congress authorized an additional $2 million for the antiterrorists activities. That money was not used and apparently, was not needed. So, we tried to zero in on the question of how much money is appropriate for the activities in the forthcoming fiscal year.

Mr. MOORE. We have asked, Mr. Drinan, for $10.6 million, for fiscal 1980. But that is down about $1.4 million from 1979, current year. That will involve a reduction of some 70 positions, for our field response as opposed to this year.

Mr. DRINAN. Does that figure that you mention for this year, does that include the $2 million that was extra?

Mr. MOORE. No. No, sir.

Mr. DRINAN. You make out a case here that the terrorist challenge is in a lot of places, and I think you mentioned there were 84 terrorist activities or bombings last year?

Mr. MOORE. Fifty-two, sir.

Mr. DRINAN. Fifty-two, I am sorry. Why has the amount diminished?

Mr. MOORE. I think one reason, Mr. Drinan, is because of the fact that again we are trying to program, when we are doing our budget we are doing them 2 years hence, and the activity we have had over, those previous years did not measure up to what it was for 1978. So it is for that reason, plus the fact that we have brought down our investigative activity in domestic security-type cases, which is far less than it used to be.

So, for that reason we are going then into the quality concept in concert with the Attorney General guidelines, which have also accounted for that reduction.

Mr. DRINAN. Well, I went back, sir, over the three or four hearings this subcommittee has had, and the program obviously has shriveled enormously, spectacularly, if you will.

I raised the question others have raised, is it contemplated that terrorist activity will be brought into the Criminal Division? Why is it necessary to have a separate division? These are crimes. They may have a unique motivation, sometimes, not always, but shouldn't all the resources of the Criminal Division be there so terrorist activities be treated like other crimes?

Mr. MOORE. That is very true, Mr. Drinan. In fact, they are. That is the section I represent. All acts of terrorism are considered and investigated as criminal violations. They are separate and apart from the foreign Counterintelligence Division so that which we speak of is under the responsibility of the Criminal Division.

Mr. DRINAN. You state here another point that you don't want the Congress to restrict the activities any further. Would you feel that anything that the Congress has done for the last 3 or 4 years does, in fact, hinder the objectives and the implementation of the terrorism program?

Mr. MOORE. No. I think what we were alluding to there, Congressman, is the fact that obviously there have been some constraints and restrictions imposed by the Attorney General's guidelines. We are not saying in any way that those guidelines are not correct. We can serve our purpose in concert with those guidelines for our investigative responsibility. I think our main concern is in the coordination of our investigative efforts of the field here at FBI Headquarters. That effort Congress was kind enough to give us some restoration for last year.

In the current budget of 1980, this reduces our headquarters coordination from 22 special agents authorized for fiscal 1979, that would be reduced down to 9 during fiscal 1980. I think which we would ask the Congress, if we could have restored at least the positions to total

18 special agents assigned here in headquarters, rather than the 9 that has been indicated.

Mr. DRINAN. The appropriation you are requesting, $10 million-plus, does that include money to pay informants?

Mr. MOORE. No.

Mr. DRINAN. That is out of a separate fund?

Mr. MOORE. Yes, sir.

Mr. DRINAN. You know the difficulties a lot of people have with informants, and the assumption is running that they have to be used.

Could you give some specific information as to why informants in terrorism investigations are apparently necessary?

Mr. MOORE. I think, sir, that with regard to one, the preventing phase, I think it is absolutely essential in an intelligence agency to have information available to it. Lawfully gained and gathered.

In order to then preclude the act, and deter it before it takes place, this is why we need informants and I might add that in this particular field, we only have 17 informants, in the domestic security program, which shows a tremendous diminution of what it was years ago, that you alluded to.

What we are really trying is to direct our efforts at, in the preventive phase, having the capability of intelligence that alerts us, for us to analyze, thereby precluding an act from occurring. That is the need for the informant and we have very few informants in this particular area.

Mr. DRINAN. One last question on that point. As you know, the informants used to be in number around 11,000 and now they're down, as I recall, to 2,600 and in your unit, the terrorism group, they're down very, very sharply and that simply raises the question, or the unavoidable conclusion that a lot of these informants were of no use and thousands of them have been dismissed. So I am trying to look for some norm for which those that have been retained are useful creatures.

Mr. MOORE. They are useful creatures, and again——

Mr. DRINAN. That is what you said when you had 11,000. That is what the Bureau said when you had 11,000.

Mr. MOORE. Again, sir, in concert with our guidelines, they also have imposed the impact of our informant process. We have taken self-imposed restrictions to insure the quality of the informant coverage in this particular program, so we just don't proliferate people and say they're an informer. We trust our informants are of quality, but I think the Freedom of Information Act has had some impact on the development of informants in this particular area.

In the days that you speak of, tremendous memberships in these particular groups of activities provided many informants; today, they are cellular in structure, with very, very few people, and it is extremely difficult to obtain the quality informant coverage that we really would hope that we can get.

Mr. DRINAN. I am not certain that FOIA is relevant here, but it may be that I come back to that because I serve on another committee, on government operations, that Judge Webster testified the other day, saying what you said and I didn't think he proved his case. I yield to the chairman.

Mr. EDWARDS. Thank you, Mr. Drinan.

Well, the evidence for a change, insofar as criminal activities in the United States, the evidence is pretty good in this area. We certainly would be delighted, I am sure, if we could say the same thing about street crime, and burgulary, robbery, white-collar crime, or anything—any kind of criminal activity that must be dealt with by the criminal justice system of the United States.

This is not true of other countries. In Germany and Italy and some European friendly countries, they have had a serious increase in terrorism.

Are any of you gentlemen members of the special operations and research staff? Has SOARS conducted studies as to why we have less terrorism in the United States and that it has been diminishing rather than increasing as it has in these Western European countries?

Mr. MIGNOSA. If I may, I will take a crack at that. I would like to answer that, if I may, sir.

I think it is a combination of many things here in the United States. One is our—security procedures that are utilized, for example, at airports. Another is the hard-hitting guidelines that the U.S. Government has proclaimed against terrorism.

We won't yield to terrorist blackmail. The hard-hitting effort of the intelligence community in this particular field, where not only through preventive efforts, but reactive efforts, we get the information, and we put people in jail.

We had a great year last year against terrorism. We put a lot of people in jail, and that is the answer, if you can put them away.

I think one of the reasons is that here in the United States, at the moment, we have no overriding cause for terrorists to get behind. We don't have a Vietnam, thank God; we don't have something where the people or youth can gather around. This is one of our reasons. I think also——

Mr. EDWARDS. Are you saying that the Vietnam war caused multiplicity of terrorist acts in the United States?

Mr. MIGNOSA. No, I am saying that we don't have a cause around which the terrorists can gather.

Mr. DRINAN. Just for the record, if I may interrupt, I don't think you wanted to say what you said.

You said the terrorists gathered around the Vietnam cause. I think that is a calumny on those that protested the war.

Mr. MIGNOSA. I don't imply that. The point I wanted to make is that we don't, at the moment, in the United States, have an overriding cause that the terrorists can attract to.

Mr. DRINAN. But the terrorists were not attracted to the Vietnam protest. That is my point.

Mr. MIGNOSA. And we found the international terrorist wants the sympathy and support of the U.S. Government, and that may be one of the reasons why we have been relatively free of international terrorism. If you put all of these together, and add the element of luck, I think is part of the reason why we have not had much international terrorism in the United States, and why we are coping with the domestic terrorists.

That is not to say, of course, that it is not going on continually. I think the program—if I may just take one more minute—I think you might look at the terrorism program of the FBI sort of as a smoke alarm.

We all have smoke alarms in our homes because we want some advance information against fire. Well, that is what this program is trying to do. Give us some advance information against terrorism, and then being in a position to react effectively if a terrorist act would happen.

Mr. MOORE. If I may, I think it is also the fact that—what Mr. Mignosa alluded to—the arrest and convictions we had last year. If you recall the Hillsboro case, eight individuals involved in that. The George Jackson Brigade, four individuals in that. We can go on through others. I think this has had a definite deterrent effect, but then we can't be that complacent to say, we have not had a rise in terrorism, so we can not be prepared for it if it should happen. I think that our successes have been, and I hope we never become involved in such activities as some foreign countries have been involved in, but I think it is through these efforts that we have to knock on wood and say, we have not had them as yet, but that is not to say we couldn't.

Mr. EDWARDS. Thank you. I think it is important to identify better why those other countries have increasing incidents in terrorism and we have less. I am not all that sure and I am sure you are not all that sure of that enforcement of the law is a total answer. Certainly the Germans have a very efficient national police department, and a much tidier country in which to operate than our own. Yet, the incidents of terrorism there has struck deep blows at their democratic form of government; and civil liberties, due process, has suffered as a result of national panics that has overtaken the Federal public as a result of these incidences. I think it would be helpful if someone or some agency would describe for the American people the profile of terrorism in the United States.

Generally describing the 52 or so incidents of last year, or the previous year, do they have to do with the same energies that cause terrorism overseas? The difficulties of Arabs, and Israel, the Palestinian Liberation Army, Northern Ireland, the IRA, a lot of terrorism goes on there. In the past we have had terrorism in the United States and elsewhere relating to Cubans and anti- and pro-Castro elements in the political organizations, Puerto Rican organizations, one way or the other. I don't think we have a very good profile of what do the terrorists consist of in the United States. We certainly do with Jackson—who are some of the others? If you can say the general, not describing specifics.

Mr. MOORE. We have the one with the Senator from California, where, the Weather Underground was involved. They were then. We have had also the Egyptian—the bombing of the Egyptian Tourist Office in New York; the Chilian; we have had most recently the bombings of the Mobil Oil facility in Newchester, N.Y., just within the past week. These are the activities, Mr. Chairman, that we have here. For us to draw an analogy of really what precipitates it, I don't think in any quarters you would find a specific intent or reason. We don't know. I think because so many issues are prevalent throughout the free world, as well as others. I think your question is very germane and very profound, that some analysis—and I would like if we could try for you and submit this as to an analysis we could make of the intelligence we gather—why is it different over there than over here and try to draw a sum.

You're right, that is not the final answer, but that is the best we can determine to why we have not had a proliferation of these terrorist acts.

Mr. EDWARDS. Very good. Take a look at this morning's Times where it describes the difficulties that have surfaced in Turkey where social justice has taken a bad turn for the worst, and where they have multitudes of people who are distressed with the government. Terrorism is on the rise in Turkey, which of course is very disturbing.

Now, back in September of 1977, President Carter formed a special coordinating committee of the National Security Council under the chairmanship of the Assistant to the President for National Security Affairs and the Justice Department. The FBI are represented on the working group. It is a working group of this organization. There are a lot of people on this working group.

Has this group had meetings?

Mr. MOORE. Yes, sir. I also am a member of that, along with Mr. Mignosa, and I also sit as an alternate to the executive session of this committee.

These committees meet at least once a month and on many occasions more. That group is broken down then into subcommittees.

I would say that without reservation that there is a meeting of these particular committees at least once a week concerning these issues that we are addressing here.

Mr. EDWARDS. So you think the coordinating committee is working pretty well?

Mr. MOORE. I think, Mr. Chairman, that in effect what it does is it draws together the nucleus of agencies involved in a terrorist incident. It draws them together for the platforms of the activities in which each has a responsibility. In the Hanafi situation, many, many agencies were involved in these activities, not just the FBI.

Mr. EDWARDS. Who was in charge? Is there an immediate decision made as to who is going to be in charge?

Mr. MOORE. In that case particularly, that was handled by the Washington Metropolitan Police Department. The Bureau was very much involved. If it is an attack on the embassy, there is no question the Bureau has the prime responsibility as an investigative agency. In 99 percent——

Mr. EDWARDS. Those rules are written out so everybody knows the responsibility? You can have somebody in charge right away?

Mr. MOORE. Absolutely. Yes, sir. That plan, all of those plans, have been given to our 59 field offices which have contingency plans in the event of these terrorist acts; yes, sir.

Mr. EDWARDS. The general rule, of course, is that local police would have the first responsibility, unless there is something else that would bring the Federal responsibility.

Mr. MOORE. As an illustration, I was personally involved in the attack on the Phillipine Embassy. The Metropolitan Police Department was there several minutes before I arrived. When I arrived they totally knew from these agreements, which have been longstanding, that the primary responsibility for this would be the FBI, so there was no question as to who had the primary jurisdictional responsibility. But it has worked in concert with local law enforcement.

Mr. EDWARDS. Thank you. My time is expired. The gentleman from California, Mr. Matsui?

Mr. MATSUI. I have no questions.

Mr. EDWARDS. The gentleman from Massachusetts?

Mr. DRINAN. Would you tell us more, as Mr. Edwards suggested, about the nature of the 52 terrorist bombings in 1978? We are familiar with the ones you mentioned, but going down to those that are less notorious, can we get a clue as to what the motivation of the people is?

Mr. MOORE. I can briefly go through them or we can submit them for the record.

Mr. DRINAN. Just mention some of them. In other words, I am coming to the question of a possible statutory definition of terrorism. That is one of the problems confronting the congressional committees, and as lawyers we say that there should be a definition of terrorists, and especially where we seek to prevent it. But tell me about the 52 terrorist bombings.

Mr. MOORE. We had the FALN in 1978, LaGuardia Airport, Eastern Airlines terminal, a number of department stores in New York City, Washington, D.C.; we have had activity—New World Liberation Front, bombings in California——

Mr. DRINAN. Why did you say New World Liberation Front? Did you pin it on them or did they take credit for it?

Mr. MOORE. They took credit for it.

Mr. DRINAN. Was there any followup?

Mr. MOORE. They are currently under investigation, because again, these are criminal acts, bombings. The Sam Melville, Jonathan Jackson Brigade, two bombings in 1978 of oil facilities in Massachusetts——

Mr. DRINAN. Tell me a bit about that. I hadn't known about that.

Mr. MOORE. I think Mobil Oil has had four bombings this year. Those are ongoing investigations, and for the public record I can not get into those. As to investigative effort being conducted in them, but the most recent one is the one last week in which approximately 20 sticks of dynamite were left on the third floor, top floor of Mobil Oil, totally devasting in effect. It was so devastating that we had a problem getting in to conduct our investigative activities until construction crews could arrive. This was a very devastating bomb—20 sticks of dynamite.

Fortunately, it was evacuated. Many of our utility facilities have fallen victim to these bombers. As Mr. Mignosa mentioned, in most of these bombings, a call will be received either at a local news media, police department or FBI office, indicating the bomb is there. Then, that arduous job of trying to detect it, find it, and make sure people are properly evacuated from that facility. Lord knows what would have happened if the one—the Mobil Oil facility recently, if they had not vacated the premises.

Mr. DRINAN. Like the chairman, I keep asking, what does Mobil say about these terrorists? What is the motivation of these people?

Mr. MOORE. Mobil is very concerned about it.

Mr. DRINAN. Do they have any clue as to who these people are?

Mr. MOORE. We know the group that has laid claim to this.

Mr. DRINAN. What would their motivation be?

Mr. MOORE. They were interested in the multiconglomerate operations of Mobil and for the release of certain political prisoners, as they say, in the free world in the United States. That is their motive for it. They just continuously keep up these bombings.

Mr. DRINAN. How would the FBI define terrorism in order to activate it's antiterrorism section or programs?

Mr. MIGNOSA. Basically, there is no violation as such called terrorism, no violation.

Mr. DRINAN. No statutory crime.

Mr. MIGNOSA. The violation is what the terrorist does. The kidnapping, hijacking, the bomb ng or whatever.

Basically, an oversimplified definition we utilize is: "Violent criminal activity designed to intimidate or induce fear for political purposes." You alluded to the Mobil bombing. In a communique that was at the site, it indicated that they were demanding independence of Puerto Rico; they also demanded the release of five Puerto Rican national prisoners. These were the people in prison for attempting to assasinate President Truman in 1950, and shooting up the House of Representatives in 1954.

We also have independence for Puerto Rico as one of our causes that the bombers continue to utilize.

Another cause utilized for bombings is, for example, the anti-Castro activities against the Castro government. These are the causes that we have, political causes, and this is what activates—when you say our antiterrorism efforts, we are activating them because we have a substantive violation. But we are also trying to prevent them from happening, if we can get the information ahead of time, and in some cases we have.

Mr. DRINAN. But, I gather that despite the frightening nature of all these things, despite the fact that presumably at least 52 terrorist bombings will occur in 1979, we feel that the requested appropriation of some $10 million is sufficient to do everything possible in this area?

Mr. MIGNOSA. We have no problem at all, sir, with the amount of monys that will be allotted for our field activities for fiscal 1980, sir.

Mr. DRINAN. If someone in the Congress said this is a terrible situation, we have to do something more about this, the FBI is not doing enough, let's double the amount, give them $5 million more, how would you counter that?

Mr. MIGNOSA. The first thing, I wouldn't want to see us get $5 million more. We don't need it at this point. We always have the option through our budget procedures, that if terrorism does increase more than what we can contemplate, then we can always come through Congress and say we need more money. Judge Webster has assured us, and has assured Congress, that while terrorism is not a priority item in the FBI, when the terrorist act does happen, it becomes the top item in the FBI and that we are going to solve the case.

For example, we had a nuclear extortion situation in Wilmington, N.C., where some 2.6 enriched uranium was taken from a plant.

Well, in that particular case, the complete facilities of the FBI and our contingency plans that we have for this particular operation went into effect. The incident occurred on Monday and we apprehended the person and recovered the material on Thursday. The FBI still can get the job done. We have come up with a budget that we think is sufficent. We do have one problem, and that is headquarters coordination. Mr. Moore alluded to that, and since you have asked, I will tell you.

We don't feel that five supervisers at FBI Headquarters can handle coordination of this particular problem. Not with the committees that we belong to, not with the complete program, complete responsibility of the program within our hands, and the FBI, as you well know, is the lead agency within the U.S. Department of Justice to combat terrorism and I think that if we are going to do the job in this particular area that we ought to have a sufficient amount of peope to coordinate the activities, because there are 59 field offices out there in the rest of the United States that we look at, and five people, are not going to coordinate and do the job I think is necessary. But that is—since you asked—I think I owe it to you.

Mr. DRINAN. Thank you, Mr. Chairman. If I may come back to Mr. Moore and talk about the informants program. As you know Mr. Moore, this committee has collaborated with GAO doing investigatory study of the informants program of the FBI. And unfortunately, in my judgement the FBI refused to cooperate fully with the GAO, and at the time of that refusal, Mr. James Adams and Mr. Edward Sharp said that the FBI was considering undertaking its own review of the program to prepare for the hearings.

I wonder if that study has been initiated and if you have any indication as to what the FBI has done to do a thorough in-house review of its own informants program.

Mr. MOORE. Mr. Drinan, Judge Webster is trying to work out a system where such a review can be conducted and has discussed this with Mr. Staats. I think I would rather reserve my comments, since it does deal with policy, for Director Webster when he appears before this committee on the 27th. But I talked to him last evening, and he said that he is well aware of your concern and the committee's concern, and that we will try to work something where it will satisfy GAO, as well as the committee, on the oversight, that our conduct of the informants program is at a standard which you would hope and trust that it is.

So, if I may, I would rather defer it.

Mr. DRINAN. That is a good answer, gentlemen. But from your own responsibilities, how would you evaluate the usefulness of the informants that you have—is it 12?

Mr. MOORE. Seventeen.

Mr. DRINAN. Presumably you are satisfied with their performance and the quality of the services. How many did you use to have?

Mr. MIGNOSA. Within this program?

Mr. MOORE. What period?

Mr. DRINAN. I am not certain, but you indicated there is a sharp diminution, and I am trying to put this in perspective.

Mr. MOORE. There were 22 last year, and as we go back through the early 1970's, it was way up because of the type cases that were involved. Then when the Attorney General's guidelines came out in April of 1976, then that sharp decrease in those investigative activities began.

What I am saying is that we really want and need additional informants in these particular areas. We only have 17. We are conducting investigations of 22 domestic organizations and 32 people out of a population of some 220 million people, and I think that if we can continue to develop quality informants within these parameters it

will give us the intelligence for use in the preventive side, in order to be aware of terrorist planning against this Government and try to preclude it before it happens. That is not to say we want an absolute proliferation of thousands of informants. That is not the purpose. The purpose is to get quality informants. But again, they are very difficult to get, because of the cellular structure of these small groups.

I do think that the Freedom of Information has had some impact, because the informants themselves are leery that if they do furnish information their identities may not remain completely anonomous.

But again, I think these are issues that Judge Webster touched upon.

Mr. EDWARDS. If you would yield. Do you have specific instances of street agents who have reported to the SAC that an informant has said "I am not going to talk to you any more because of the Freedom of Information Act"? Do you have specific instances of that?

Mr. MOORE. Yes.

Mr. EDWARDS. GAO was unable to find any in its audit. Why?

Mr. MOORE. You would have to ask GAO.

Mr. EDWARDS. You can provide those specific instances. How many do you have?

Mr. MOORE. I don't know the number of them, but the agents are concerned as well as the informants about that, and I think that this will be elaborated on by Judge Webster, that is to the confidentiality that exists between an agent and an informant.

Mr. EDWARDS. You gentlemen were all street agents at one time or another?

Mr. MIGNOSA. Yes, sir.

Mr. EDWARDS. Did you, in your relationship with your own informants and this program for developing informants in those days, have a dialog with your informants to the effect that, "I am going to protect you; you are never going to have to go to court," and so forth?

Mr. SATKOWSKI. Yes.

Mr. MOORE. I think there is a certain degree of confidentiality that exists between an agent and an informant. The informant obviously, in many of our criminal cases, is asked will he testify if this case reaches that position of prosecution. If the informant says "Yes, I am more than happy to testify," he is allowed to do so and many have and have gone into the witness protection program.

On the other hand, when the informant says, "Mr. Edwards, there is no way that I will ever testify in a court of law on this criminal conduct, "we have tried to honor that and protect that identity, to the point of even asking for a dismissal of our investigative case to protect that informant.

Mr. DRINAN. Thank you, Mr. Chairman. That was a helpful line of questioning. The other committee on which I serve is seeking to build precisely this type of information that Mr. Edwards suggested. The FOIA was passed by this Congress overwhelmingly over the veto of President Ford, and we do not want to inhibit the possibility of the FBI reaching these 52 incidents. Obviously, that is a startling thing, and I would hope that the number would be down in 1979.

It is my understanding that in the first 2 months of 1979 terrorist activities, the bombings, have decreased. Is it too soon to say that is a trend, or would you have some comments?

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Mr. MOORE. I think it would be a little premature.

Mr. DRINAN. It is down in the last 2 months.

Mr. MOORE. We don't have the figures. We can probably run a tab; we can submit that for you, for your information. We wouldn't have those available. They come in on a quarterly basis.

Mr. DRINAN. Some people would take the position—and I would be one of them—that the FBI has to do better; 52 is too many, and that we would want to give you the resources and intelligence and the wherewithal to do that. We in the Congress have to justify your existence, and people will say, "52 bombings last year. Is it going to be lower this year? Why don't you do something about this?"

Mr. MOORE. We appreciate your concern, sir.

Mr. DRINAN. You are asking only for the 10 million-plus, and you say it is sufficient; but I frankly don't have adequate information to say it is sufficient. And if we have an authorization, I would have to mark up—I would have to raise that question again. And I am not getting adequate information from this hearing that that amount of money is sufficient.

Mr. MOORE. We consider that the 305 positions, field operation positions, is adequate to handle the terrorists program. It is obvious that if there would be a proliferation or increase, we would certainly not be reluctant at all to come forth and say that we need additional assistance in this area. We have had this shortfall for the past year, and that is why, then, we consider that we can handle it. But the problem again is the coordination; that is where we are concerned, at headquarters. And in addition to what Mr. Mignosa mentioned, the coordination in effect actually monitors the field, to insure that our investigative activity is totally within the parameters of the Attorney General's guidelines. And again, you consider that the moneys that have been allocated for the field program are sufficient.

Mr. DRINAN. Do you contemplate an increase in the informants from 17 to a higher number?

Mr. MOORE. I would hope that we could increase our quality informant coverage, yes, sir.

Mr. DRINAN. But that is not in the budget. That is paid for from another source.

Thank you very much, Mr. Chairman.

Mr. EDWARDS. Mr. Moore, wouldn't you agree with the statement that the regulation, production, distribution, and use of explosives in the United States is poorly regulated; that there is too much dynamite available for terrorists and other people without proper controls?

Mr. MOORE. That would be difficult for the Bureau. We know, through our Terrorist Research Bomb Data Center which catalogs instances of thefts, that there is a tremendous amount of explosives used by construction companies. But to give you the statistics of how we assess that, whether their security measures are very poor, I don't know. I think maybe ATF would be in a better position to respond to that. But there have been a tremendous amount of thefts, no question about this, from legitimate users of explosives.

Mr. EDWARDS. I guess it can be said that people have no great difficulty getting hold of dynamite in this country, and it is very hard to trace.

Mr. MOORE. That is very true.

Mr. EDWARDS. When this subcommittee asked the GAO to audit the FBI's domestic intelligence programs, first in 1975 and then in 1976, we were unable to work out arrangements with the FBI, the Department of Justice, so that the auditors could see the files themselves. The arrangements were that an FBI agent would stand in between the file and the auditor, even though these auditors are privy to highly confidential information in the Pentagon and elsewhere. Memorandums were given to the auditors instead of the auditors having any access to the files whatsoever.

Now, just recently, there are allegations that during these two studies there was a certain amount of manipulation, and that agents standing between the files and the auditors manipulated the files, perhaps did not provide the right information or provided information with regard to other files, and so forth. Now, is this under review at the present time? Is the Department's Office of Professional Responsibility involved in this?

Mr. MOORE. If I may, Mr. Chairman, I know very little about this other than what was in the paper the other day. I do know that the Department of Justice, the Office of Professional Responsibility, is conducting some inquiry. Beyond that, sir, I would not be able to respond.

Mr. EDWARDS. Mr. Matsui.

Mr. MATSUI. I do have some questions.

Regarding the dynamite the chairman mentioned, you mentioned the ATF was the one primarily involved with that. Do you coordinate with the ATF regarding that?

Mr. MOORE. Yes.

Mr. MATSUI. What type of coordination do you have, what communications?

Mr. MOORE. We have a number of working agreements with ATF because some of these cases have been centered in bombing matters. The explosive itself is a responsibility of ATF, the same as firearms. We have a very close working relationship with ATF. We recently had a very successful operation, a joint effort with ATF on the west coast, utilizing undercover agents. We consider we have a fine working relationship with ATF.

Mr. MATSUI. Another area, and perhaps this question, or this area, has already been explored, but I would imagine activities would center around very sensitive areas, like powerplants and dams, and you would communicate with nuclear power people like Smith in Sacramento.

Mr. MOORE. Yes. In the case down in North Carolina, that was a combined effort of interest of many agencies, including the Nuclear Regulatory Commission, a tremendous effort by all that brought this thing in. It wasn't the effort of just one agency. The Bureau had the investigative responsibility, but it is the culmination of a unified record of the effort of all that brings these investigations to a successful conclusion, and we certainly encourage that cooperation.

Mr. MATSUI. I guess that directs the attention to the informant's interest. In other words, if you hear of the situation, then of course you can immediately coordinate with the officials in the powerplants, the local jurisdictional police and law enforcement agency. But what about in situations where you don't hear from informers? Something

could occur without your knowledge, of course, and in other words, it may be too late. Do you send regulations, for example, to my area, Sacramento municipal district, which has a powerplant? Do you send information to them and tell them these are the standards in safety regulation regarding terrorist activities?

Mr. MOORE. In a nuclear plant I think NRC has certain prescribed regulations for security procedures for those particular installations. In the situation that you posed, this puts us then into the next phase. We didn't gather the intelligence, we didn't have the intelligence to prevent it. The next phase is the reactive, after it goes off; what do we do? That is when we pull out all the stops and go in from an investigative side.

Mr. MATSUI. You mean NRC has primary jurisdiction over security aspects when you have no idea——

Mr. MOORE. They have regulations for those nuclear installations.

Mr. MATSUI. You coordinate with NRC at that level, then, in terms of facilities.

Mr. MOORE. Yes, sir.

Mr. MATSUI. In what fashion?

Mr. MOORE. Mr. Satkowski is our representative with NRC and he can probably answer that in depth for you.

Mr. SATKOWSKI. What we have in fact is a memorandum of understanding drawn up between the respective agencies, and NRC and the Department of Energy and the FBI participates, at least on a quarterly basis in both planning and response to incidents of terrorism in these areas. So it is quite a coordinated effort. We have participated in planning committees and in working groups.

Mr. MATSUI. But the leading agency is NRC there?

Mr. SATKOWSKI. Not in an investigative sense, but in a regulatory sense.

Mr. MATSUI. I have no further questions.

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. Now, I think that the witnesses are very helpful, and I commend the chairman for the ongoing study. I think the chairman and the subcommittee have made a great deal of progress, along with the FBI, and I once again thank Mr. Moore and his colleagues for a very helpful morning.

Mr. EDWARDS. Counsel, Mr. Breen.

Mr. BREEN. The materials provided by the Department with regard to fiscal year 1980 indicated a shortfall existed in 1978 of some $5 million; that is $5 million that was authorized and not spent. Was that money reprogramed?

Mr. MOORE. You have to ask Mr. Groover.

Mr. BREEN. If it was, where did it go?

Mr. GROOVER. Mr. Breen, I am not sure that would have been identified specifically as a reprograming during fiscal year 1978. I think it would not have been. Generally where the money went was to the higher priority investigative areas in both white-collar crime and organized crime, which were overspent in fiscal year 1978. Those funds simply came from the underspending in programs such as terrorism.

Mr. BREEN. How about 1979? What does it look like? You have an increase last year over what you had requested. Is the reduction in

the number of bombings reflected in the activities shown by any other method you are able to evaluate?

Mr. GROOVER. Based on our first quarter of experience, we are considerably less than what was appropriated for fiscal 1979. The most recent information we have is at the end of the first quarter period. It is likely to increase somewhat, particularly with regard to the winter Olympics and other actions that are taking place.

Mr. BREEN. Do you project, though, that 1979 would track fairly closely to the activities of 1978 in terms of work years or dollars?

Mr. GROOVER. Work years for 1979 will probably be slightly above 1978 by year's end.

Mr. BREEN. Mr. Moore, you or Mr. Mignosa talked about the coordination of investigation. Is there a one-line definition? Is it supervision that you really talk about, because we keep seeing it——

Mr. MOORE. It is really "management" that we are doing. We are overseeing the terrorist program within the 59 field offices to insure (1) that they are totally within the bounds of the Attorney General's guidelines, and (2) to give the support necessary from headquarters. When one of these incidents happens, there is a tremendous effort exerted just in the notification of proper agencies. Then we go through the particulars as events take place, and when questions from the field come that require decisions from top management at both the Bureau and the Department of Justice, these go into that byplay. So it is really a management process of the entire field program that we try to coordinate back here at headquarters; to provide statistical data that is necessary and a benfiet to our field offices as well as local law enforcement officials. But to say "supervise" cases, per se, that is really a misnomer. It is really a coordination of effort.

Mr. BREEN. You indicated that the number of coordination personnel or special agents that do this coordinating has gone from 22 to 9 in this program. Now, the funding for those positions is in the coordination-investigation function, not in terrorism.

Mr. MOORE. That's right.

Mr. BREEN. And how this coordination comes in, that is, the allocation of resources for the terrorism aspects of your division, is partly your decision, I assume, is it not, as to how the allocation of coordination positions should be among the programs within your division?

Mr. MOORE. Yes.

Mr. BREEN. So you had some impact on the decision to reduce the number from 22 to 9?

Mr. MOORE. No; not to that degree, no.

Mr. BREEN. Is it true you were given a certain amount of resources and you had to allocate those under your control?

Mr. MOORE. In the terrorism section; yes.

Mr. BREEN. One of the reasons for this reduction here is because it is a low priority program in terms of the other programs of the Bureau, is it not?

Mr. MOORE. Yes. This would be a priority 3. The three major programs are foreign counterintelligence, organized crime, and white-collar crime. The terrorism program falls at the level of priority 3, not priority 1. But once a terrorist act occurs, it then shifts and becomes priority 1 from an investigative effort standpoint.

Mr. BREEN. For fiscal year 1979, were there actually 22 bodies in place in coordination?

Mr. MOORE. Yes, sir.

Mr. BREEN. What happens to the difference, then?

Mr. MOORE. We lose 13.

Mr. BREEN. Where do they go? They don't disappear, I hope.

Mr. MOORE. I would hope, we have until October 1 to reduce that, and it would be reduced through attrition.

Mr. BREEN. Or reassignment?

Mr. MOORE. Yes; to other programs.

Mr. BREEN. You also mention in your testimony SOARS—the Special Operations and Research Staff. This is funded by LEAA, is it not?

Mr. MOORE. Just the travel.

Mr. BREEN. The travel is funded, but the rest of it, salaries and the rest of it——

Mr. MOORE. Is funded by the Bureau.

Mr. BREEN. And that is set up at Quantico, is it not?

Mr. MOORE. Yes.

Mr. BREEN. And they travel as well, and I know they bring people in for training, but do they go out?

Mr. MOORE. When an incident occurs, they also travel to the scene and provide whatever assistance they can provide to it. There were two that went from Quantico down to Wilmington, N.C.

Mr. BREEN. Of the 305 people proposed for the terrorist activities for the next year, how many people are headquarters people?

Mr. MOORE. The 305 is totally field. That is agent personnel in the field.

Mr. BREEN. OK. I understand that. Who runs the other aspects of the terrorism? Does that come out of the coordination function of the Bureau, all other aspects of the terrorism program? Is that out of the coordination parts of the budget?

Mr. MOORE. Yes.

Mr. BREEN. That includes the bomb data center?

Mr. MOORE. Yes.

Mr. BREEN. How many people are assigned to headquarters in terrorism functions, although not funded by the terrorism program?

Mr. MOORE. We have four——

Mr. GROOVER. There is a total of 36 positions in the coordination of terrorism in headquarters.

Mr. BREEN. Now?

Mr. GROOVER. In the fiscal year 1980 budget.

Mr. BREEN. Nine of them would be special agents; the balance would not?

Mr. GROOVER. Right.

Mr. BREEN. Is see. Let me ask you this, Mr. Groover: Is this just a normal accounting way of doing this, to include part of your terrorism program in some other program because it is more reflective of headquarters activity than field activity?

Mr. GROOVER. We have an overall program of coordination of investigations. The attempt is to put the resources where the management is. Coordination is a headquarters function within two headquarters divisions, Mr. Moore's division and Mr. Cregar's division

in Intelligence. Those make up our total coordination effort. Terrorism is simply a part of that headquarters effort. All of the coordination program is then separated in their own parts.

Mr. BREEN. Back to the SOARS program. LEAA provides the travel funds for that. The FBI could not provide the travel funds, could they, for that program? Are you prohibited by law from providing the travel funds necessary to implement that program?

Mr. GROOVER. I don't think we are prohibited by law from providing the funds. It is a program that had the LEAA's interest. For provision of training to the State and local departments, we have the resources, the manpower, and the competence. They have sufficient interest to the point that they are willing to get our instructors there or the State and local police participants here at Quantico to receive the training. It is a coordinative or cooperative effort.

Mr. BREEN. Thank you.

Mr. EDWARDS. Mr. Starek.

Mr. STAREK. Mr. Moore, I assume you are still training State and local law enforcement authorities on handling terrorist incidents at Quantico. I wonder if that will be ongoing or continuing during fiscal year 1980 at about the same pace it has been in 1979, or will there be an increase in these activities?

Mr. MOORE. Yes; it will run about the norm that we have during this year, yes.

Mr. STAREK. Could you describe the program? I think we have heard about that once before, but exactly how do State and local law enforcement officials enroll in the program? How are they selected to participate?

Mr. MOORE. These are men that will attend the FBI academy. They are nominated by their superior officers, and the selection process goes through us and the availability of our classes. We run about 200 to 250 of these police officers in every session. This is the manner in which they are selected. And again, the selection is, by, the nomination by their superior officers, and then we accept them for these classes. And they come from not only the continental United States, but from some of our friendly foreign countries who are also provided instructions on terrorist activity.

Mr. STAREK. So the terrorist training is just one portion of a series?

Mr. MOORE. Terrorism would be a specialized training, and it would be over and above the curriculum of the national academy. We have specialized schools for this purpose, in terrorism.

Mr. STAREK. How is that paid for? Are the funds from the terrorism program money out of a training budget?

Mr. MOORE. Out of a training budget.

Mr. EDWARDS. Will the gentleman yield?

Mr. STAREK. Yes.

Mr. EDWARDS. These foreign police that come to Quantico, how is their transformation paid from the country of origin?

Mr. MOORE. FBI.

Mr. GROOVER. May I correct that? We don't pay the transportation for foreign attendees.

Mr. EDWARDS. Iran, under the Shah, did they send people over?

Mr. GROOVER. I don't know what the countries participating were.

Mr. EDWARDS. Argentina? Chile? Do we have any names of some of the countries?

Mr. GROOVER. I don't have it with me.

Mr. EDWARDS. Could you provide for the record the names of the countries whose officers have been trained for the last couple of years at Quantico by the FBI, and how their transportation was paid for?

Mr. MOORE. I think Mr. Groover has indicated—I think we paid a per diem cost while they were here.

Mr. EDWARDS. We would also like to know what their paid per diem, if any, was.

[In response to Mr. Edwards' questions, the FBI supplied the following information:]

The FBI does not provide transportation expenses nor does it provide per diem funds to foreign police officers who attend classes at the FBI Academy at Quantico, Virginia. Food and lodging is provided to those foreign officers at the Academy after their arrival. Attached is a list of foreign police officers who attended the National Academy Program during fiscal years 1977 through 1979.

FOREIGN POLICE OFFICERS IN ATTENDANCE IN THE NATIONAL ACADEMY PROGRAM BY FISCAL YEAR

Foreign countries	1977	1978	1979
Australia	2	2	
Austria			1
Bahamas	1	1	
Bolivia			1
Brunei		1	
Canada	7	8	9
Costa Rica			1
Cyprus	1		
Dominican Republic	1		
Egypt	6	4	4
England	1	1	3
Federal Republic of Germany		2	1
Hong Kong	1	1	1
Indonesia		1	
Japan	3	3	3
Korea	1		2
Kuwait	1		
Malaysia	1	1	
Netherlands	1	1	
Netherlands Antilles			
New Zealand	1		
Norway			1
Panama		1	
Philippines	2	1	1
Republic of China	2	1	
Singapore	3	1	1
Thailand		2	1

Mr. STAREK. Speaking of friendly foreign governments, I know that the Bureau has a program or system whereby it attempt to share intelligence information on terrorists, both on persons and on activities, and I wonder how those efforts are going at the present time. Have you noticed a reluctance on the part of certain foreign governments to share intelligence information, or has there been an increase in their willingness to provide information to the Bureau?

Mr. MOORE. I think that we and they both share the same concerns, and we have certainly noticed no reluctance on their part whatsoever to furnish that information they think would be beneficial to us; and again, it would be reciprocal within the bounds of what we can disseminate. So I think that there is a fine working relationship, and we have had a number of officials who have been directly involved in these terrorist acts in their respective countries come to Quantico for these seminars.

Mr. STAREK. The intelligence information, then, is free-flowing? There are no problems with exchanging information?

Mr. MOORE. I know of no problems.

Mr. STAREK. Mr. Chairman. Thank you. That is all I have.

Mr. EDWARDS. I am interested in the line of questioning that the gentleman was pursuing. Do you have any rules about whether you are getting a freedom fighter or policeman or what king of people are coming? Suppose somebody from a country whose form of goverment we disagree with strongly, very totalitarian to the left or right, wants to send a police officer, and then your training might interfere with legitimate efforts in that country to change the form of government, not necessarily through violence, It is a political decision. Who makes these political decisions?

Mr. MOORE. I think the imput, and I think we have to go to the record for this, but I think the State Department becomes involved in this type of training.

Mr. EDWARDS. We will ask State for their rules and regulations on that.

Of the 52 incidents last year, were they practically all bombings?

Mr. MOORE. They were bombings. There were 52 bombings.

Mr. EDWARDS. How many of those took place in Puerto Rico?

Mr. MOORE. Approximately 18.

Mr. EDWARDS. This subcommittee held hearings in San Juan, and it is a constant problem with the FBI office there.

Mr. MOORE. Yes.

Mr. EDWARDS. The threat of bombings, because of dissident political groups and so forth. I should think that with the Pan American Games to be held in 1979 in San Juan and with the Winter Olympics at Lake Placid that you and the Coordinating Council would have a rather large task ahead of you. Is that correct?

Mr. MOORE. Yes, sir. It is a tremendous task.

Mr. EDWARDS. But you are spending less money. How do you account for that? Are you just efficient?

Mr. MOORE. I think what we are trying to do, and again it is not the Bureau's responsibility to police the islands of Puerto Rico during these games, but to insure response capability and gather intelligence to indicate if there will be a problem. There will be 33 countries represented, and well over 5,000 visitors at least, So we are concerned with this. And LEAA has been involved, as the Department of Justice, and a number of other agencies in studies and working groups, and have actually been on the site in Puerto Rico to do what we consider should and must be done.

Mr. EDWARDS. Now, the Deputy Attorney General testified before the subcommittee last year, and he stated that deterrence is a major element in any program designed to respond to terrorism. What is the FBI's deterrance program with regard to terrorism?

Mr. MOORE. One is the preventative phase. One deterrent is to find out about an incident before it happens, through informant coverage, through intelligence gathering and from other agencies that provide us with certain data that assist us in this deterrence.

Mr. EDWARDS. What happens if an informant tells an agent that something is likely to happen? What do you do? Do you have any specific instances of this taking place?

Mr. MOORE. Yes. We had one—we had a number. I would say that in response to that, Mr. Chairman, if an informant has furnished us information of whatever the events may be, if it entails human life, we would so notify the intended victim immediately. We would also notify local law enforcement. If it were against some facility, some public utility, we would immediately notify not only the Federal agency but local law enforcement as well as the facility itself that we had received this information.

Mr. EDWARDS. Well, then, obviously crimes will have taken place in the nature of conspiracy at the time you get the information, if the information is accurate.

Mr. MOORE. If it is accurate enough and we can build through our investigative activity, a conspiracy, we will prosecute.

Mr. EDWARDS. Or it might be under local or State law a conspiracy of some sort.

Mr. MOORE. That's right.

Mr. EDWARDS. Have those events actually taken place? Have there been indictments handed down?

Mr. MOORE. I think the case I cited earlier out in California, of the California State senator, that was a good case; long endeavor and investigative activity that led from the conspiracy right through now to the trials.

We have also had similar activity with the Jewish Defense League and Croations, et cetera, that is, we have had information beforehand, where we have been able to build those conspiratorial acts to the point of prosecution.

Mr. EDWARDS. This is where you have to be careful. Under the guidelines you can't proceed against suspicious organizations or individuals unless the guidelines are strictly followed. That is where we got into all the trouble in the past with thousands and thousands of cases; because somebody might someday do something wrong.

Mr. MOORE. That is our coordination effort, to be sure that the investigation conducted in the field is totally within the spectrum of law and the Attorney General's guidelines.

Mr. EDWARDS. do you all agree the guidelines are appropriate?

Mr. MOORE. Yes; we can live with these guidelines.

Mr. EDWARDS Would you like to see it a law?

Mr. MOORE. Yes, sir; in the charter, I presume.

Mr. EDWARDS. In the charter.

Mr. Matsui?

Mr. MATSUI. No questions.

Mr. BREEN. Mr. Moore, in your statement, page 2, you indicate in 1978 there were 52 bombings. The Justice budget summary of activities states there were 38 bombings. Is that difference because of the fiscal year?

Mr. MIGNOSA. When we formulated the budget, those were the figures we had at that time.

Mr. BREEN. That is the 38?

Mr. MOORE. Yes, sir. Now they have been increased.

Mr. BREEN. So 38 is inaccurate; 52 is accurate.

Mr. MOORE. Yes.

Mr. BREEN. I would like to ask this question, I guess, of Mr. Groover; maybe it is more general. A sum of $10.6 million or so is the request for terrorism. How much of that is salaries?

Mr. GROOVER. Roughly 80 percent of it would relate to salary, benefits, and personnel-type costs.

Mr. BREEN. Is that general throughout the Bureau? Do you figure 80 percent of all budget authorizations for paychecks or benefits for employees compensation?

Mr. GROOVER. Yes.

Mr. BREEN. And those 305 positions are all field positions; is that correct?

Mr. GROOVER. That is correct.

Mr. BREEN. Are those all agent positions?

Mr. GROOVER. Both agents and clerical—both.

Mr. BREEN. And none of those are reflected in headquarters? None of those 305?

Mr. GROOVER. None are at headquarters. Roughly 195 would be agent positions.

Mr. MATSUI. Will the gentleman yield a minute?

Am I to understand, then, that we have not seen any budget breakdown of this $10 million? I was of the impression that no budget had been submitted, since I never received one.

Mr. BREEN. Yes, sir. The committee has the binders.

Mr. MATSUI. So we do have a budget. I am sorry. Go ahead.

Mr. BREEN. That is all I have, Mr. Chairman.

Mr. EDWARDS. Mr. Moore, last year's authorization bill provided for periodic evaluations of Justice Department programs, and directed subordinate Justice Department divisions, including the FBI, to provide all necessary assistance. Has the FBI conducted an evaluation or audit of its terrorism program to determine the level of threat, the adequacies and effectiveness of the program, its accomplishments, et cetera?

Mr. MOORE. This, Mr. Chairman, would be accomplished through our Inspection Division on its audits of our 59 investigative offices. We also get input from our headquarters operation.

Mr. EDWARDS. Well, I think that the authorization intended that it go beyond the regular information. What reports, if any, have you provided to the FBI's Office of Planning and Evaluation, or to the Justice Department, on this subject—written reports?

Mr. MOORE. With regard just to terrorism, Mr. Chairman, or do you speak of the totality of the criminal investigative division, because we send a number of reports to the departments on our investigative activity in the terrorism program, so that they are well aware of that activity; and also to the Department's Review Unit that looks at these investigative activities.

Mr. EDWARDS. So there are somewhere written reports evaluating the FBI's terrorism program and describing the level of threat, the adequacies, the effectiveness of your program, and so forth?

Mr. MOORE. Yes, sir.

Mr. EDWARDS. Now, who has access to those reports, GAO?

Mr. GROOVER. Mr. Chairman, I am not sure that the type report that you are referring to or may be assuming that we have is available, or that a specific program evaluation has been made of the terrorism program. And I don't believe that that has been done or submitted, particularly since the language in the fiscal year 1979 authorization——

Mr. EDWARDS. Is it your view that the authorization did provide for such periodic evaluation of various programs?

Mr. GROOVER. Yes, sir, of various programs. What is not clear in the authorization bill is the level at which those would be conducted; whether it will be within the Department itself or within the individual agencies.

Mr. EDWARDS. Or the frequency, I imagine. That was not specific.

Mr. GROOVER. That was not specified.

Mr. EDWARDS. So that is something that should be cleared up in this year's authorization proceedings.

Mr. GROOVER. I think either in the authorization proceedings or informally, as long as we are aware of it.

Mr. MATSUI. Mr. Chairman.

Mr. EDWARDS. Yes, Mr. Matsui.

Mr. MATSUI. I can see why you were asking what percentage of the $10 million was related to salaries, because what I see, at least if this is all we have, this is all our staff has, on page 35 we have about 10 lines of exactly what the $10 million is asked to be authorized for, and I really can't ascertain from this, in this short reading, very much information. So I can see where our staff is asking these kinds of questions. And it would seem to me—and you know, again, I am new here, so perhaps I don't know the ways of what this situation is—but it would seem to me that we should be provided a little more information regarding that $10 million. The programs aren't even listed here. Your statement was helpful, but very general. I would think that we would receive a little more detail with respect to programs, what the divisional units are doing, and where the money is being allocated.

You indicated 80 percent of the $10 million is for salaries, but I don't see that in here. Could you respond to that?

Mr. MOORE. I think the appendix to our budget——

Mr. GROOVER. Mr. Matsui, I think what you have not seen is a classified appendix which has been furnished to the Intelligence Committees, and I believe to the Judiciary Committee, which has considerable detail on the individual programs within the terrorist program.

Mr. MATSUI. Well, then, whose responsibility is it, our subcommittee, or is it the FBI or the Intelligence Committee, or is it my staff?

Mr. EDWARDS. Counsel?

Mr. BREEN. The full committee handling authorization process has it, and they will, as they did last year, make all that material available for the members for reading at their leisure.

Mr. MATSUI. I would think that information would be very helpful now, because this is the time we have the opportunity to ask the questions as they pertain to the actual budget. That is my impression of this particular hearing today.

Mr. SATKOWSKI. Just as a point of clarification, the material that will be made available to you will include a specific breakdown by function of program as well as object classes of funds within a program. It is a rather thorough explanation of how things are allocated.

Mr. MATSUI. When would that be presented to us?

Mr. SATKOWSKI. Well——

Mr. GROOVER. That would be up to the——

Mr. BREEN. I think the full committee has some responsibility for that, and we will get you an answer on that as soon as possible. That is, today.

Mr. MATSUI. Thank you.

Mr. EDWARDS. Mr. Moore, you are in charge of domestic intelligence-terrorism in the FBI?

Mr. MOORE. I am Assistant Director of the Criminal Investigative Division.

Mr. EDWARDS. How many full-scale domestic security investigations are currently being conducted on individuals or groups purported to be engaged in terrorist activities?

Mr. MOORE. Last year our cases ran about 60. This is a total. You are talking about terrorism?

Mr. EDWARDS. Terrorism.

Mr. MIGNOSA. You are talking about the domestic security cases, right, sir?

Mr. EDWARDS. Domestic security almost has to be just terrorism. You can't have an awful lot outside of it.

Mr. NUGENT. Are you talking about the preventive aspects of the program?

Mr. EDWARDS. Under the guidelines, you are authorized to have full-scale invest gation.

Mr. MOORE. We have 22 organizations, and we have 32 individuals under investigation. I thought you were talking about the totality.

Mr. EDWARDS. We are interested in that aspect. Have you just taken some of the oldtime internal security cases and moved them over to the Criminal Division?

Mr. MOORE. No. Absolutely no.

Mr. NUGENT. Could I interject? Mr. Chairman, the figure of 22 domestic security investigations, if you will call them that, does not constitute what you have referred to as full-scale domestic security cases. That figure of 22 represents the total organizations which are under investigation within the FBI at all three levels of investigation. I don't have a figure as to the number of those which are full investigations, but that is available, if you would like that figure.

With respect to your question on whether these investigations include any of the old types which would carry over from the Intelligence Division to the Criminal Division, I think from my recollection there are only two of those groups on the current list for investigation.

Mr. EDWARDS. Mr. Moore and your colleagues, we thank you very much for a very helpful testimony. The additional information which we have asked for for the record we would appreciate receiving as soon as possible.

Unless there are further questions, the subcommittee is adjourned.

[Whereupon, at 11:05 a.m., the subcommittee adjourned.]

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FBI OVERSIGHT

THURSDAY, MARCH 15, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:35 a.m., in room 2226, Rayburn House Office Build ng, Hon. Don Edwards (chairman) presiding.

Present: Representatives Edwards, Volkmer, Matsui, Hyde, and Ashbrook.

Staff present: Catherine LeRoy and Janice Cooper, assistant counsel; and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The subc mmittee will come to order.

This morning marks the second of the subcommittee's series of FBI oversight and authorization hearings for fiscal year 1980. One of the issues most central to the entire oversight and authorization process is the internal self-evaluation and policy formulation process that must go on if an agency or organization is to be formally managed. This is true not only for the FBI but for the Justice Department as a whole, and indeed any Federal agency.

While the subcommittee plans to maintain its continued watch over the FBI and the other Justice Department organizations within its jurisdiction, it is our belief that in the long run effective management and policy formulation must come from within. We can and will provide guidance and resources and set priorities through legislation, oversight, and authorization. But in the first instance, direction must come from the FBI and from the Department of Justice itself.

Today we would like to explore with representatives from the FBI's Planning and Inspection Division just how this internal process works in the Bureau. In doing so, we will focus less on what resources are spent on which activities than on how resource allocation decisions are made, who makes them, who follows up with analysis and evaluation to assure that the decisions were implemented, and whether they are bringing about the desired resu'ts.

Finally, we want to focus on how the information generated through this process can be made available and made useful to overseers of the FBI, including the Justice Department, the General Accounting Office, and the Congress. We may want to explore ways to institutionalize this flow of information, through informal agreements or through the charter.

We are pleased to have with us today William Lee Colwell, Assistant Director of the FBI for the Planning and Inspection Division. Mr. Colwell, would you please introduce your colleagues and then you may proceed.

Without objection, your statement will be made a part of the record. [The statement follows:]

STATEMENT OF LEE COLWELL, ASSISTANT DIRECTOR, PLANNING AND INSPECTION DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee today to present to you an overview of the Planning and Inspection Division of the Federal Bureau of Investigation and to answer any questions that you may have relative to our duties and responsibilities.

A formalized system of inspection was instituted in 1924 within the Federal Bureau of Investigation. The objective of the inspection system at that time was to insure compliance with the law, the directives of the Attorney General and the internal policies and regulations of the Federal Bureau of Investigation and to effect economy and efficiency in investigative and administrative operations. This inspection process has evolved to what is now known as the Planning and Inspection Division, whose main objectives are: (1) to conduct financial and compliance audits of all FBI operations and officers, (2) to evaluate the economy, efficiency and effectiveness of current programs, and (3) recommend improvements and changes where appropriate.

Two charts depicting the organizational structure of the FBI and the Planning and Inspection Division are attached to this statement.

The Planning and Inspection Division is responsible for handling three separate but related functions. Accordingly, the division consists of three separate offices, each managed by a Deputy Assistant Director and they are as follows: the Office of Inspections; the Office of Professional Responsibility and the Office of Planning and Evaluation.

The Office of Inspections is responsible, on a continuing basis, for the cyclical inspections of organizational components: namely, individual headquarters and field Divisions and Legal Attaches. These inspections or audits are conducted in accordance with those standards promulgated by the revised Office of Management and Budget Circular No. A–73 dated March 15, 1978. Each of these cyclical inspections encompasses an examination of financial transactions, accounts, and reports, including an evaluation of compliance with applicable laws and regulations. A review is also conducted to determine if the total resources assigned are being utilized efficiently and economically. An important phase of each inspection is the review to determine if the entity being inspected is effectively achieving the results intended in the investigative programs within the investigative jurisdiction of the Federal Bureau of Investigation. Investigative programs have been given a priority by FBI Headquarters, and cases within those programs are also given priority. The number one priority of the FBI are the programs encompassing Organized Crime, White-Collar Crime, and Foreign Counterintelligence. During the course of inspection, we determine if resources are being used effectively in program areas, taking into consideration local crime problem areas which are not national priority but which require priority attention on a local basis.

All three phases noted above are conducted simultaneously by on-site Inspectors, Aides, and Special Agent Auditors and non-agent accounting personnel assigned to the Special Audit Staff. The inspection normally takes two to four weeks, depending on the size of the Field or Headquarters Division under inspection and problem areas encountered. Prior to the initiation of an audit or inspection, a profile is prepared based on past inspections and current input from FBI Headquarters on both investigative and administrative matters. Shortly before the actual inspection, interrogatories are forwarded for completion prior to the arrival of the inspection team. The inspection team, using the inspection profile and the responses to the interrogatories, then conducts tests and reviews of the management controls and records. A report is prepared of the overall results of the inspection, including major findings, recommendations, and instructions regarding compliance and is subsequently forwarded to the Director, executive personnel at FBIHQ, and others within the FBI having responsibilities for the various investigative and administrative programs. Subsequently, reviews of the workpapers and report are made to follow up on any recommendations made therein to insure that the findings and recommendations are addressed and resolved.

The Office of Professional Responsibility (OPR) is responsible for supervising, investigating, or monitoring the investigation of allegations of criminality, serious misconduct and moral turpitude concerning employees of the FBI. Our OPR

works closely with the Department of Justice OPR and keeps that office fully informed concerning all matters handled. In addition, the OPR monitors disciplinary action taken against our employees to insure discipline is uniformly administered.

The Office of Planning and Evaluation is responsible for broad base program evaluation of all investigative and administrative activities or functions. The objective is to improve economy and efficiency and to ascertain if the desired results are being effectively achieved.

Since its inception in 1972, OPE has served as a vehicle for change in the FBI reviewing various program components, functions, and activities. Recommendations have been made for policy changes, for new policy initiatives or for reaffirmation of existing policy. OPE principally responds to specific requests of the Director emanating from sources at FBIHQ and from the field to evaluate matters considered priorities at the time. Also, in accordance with a recently developed five-year audit plan, OPE is systematically reviewing all FBI operations, programs, functions and activities. Essentially, OPE serves as the operational auditor of the FBI.

In October of 1978, three Special Agent Supervisors were transferred into OPE, all of whom have prior substantial auditing experience with national Certified Public Accounting firms. Two are Certified Public Accountants. An Audit Manual is being written for the guidance of all OPE personnel in conformance with current OMB and GAO standards, policies and procedures. Present personnel have received or will shortly receive training in Operational Auditing based on techniques developed by GAO. Additional qualified personnel are being added to the OPE staff. As already noted, a five-year audit plan of all FBI programs has been formulated and additional audits will soon commence. Personnel are assigned to this office for a minimum three year period.

In summary, the above three offices compose an independant appraisal activity within the Federal Bureau of Investigation for the review of all funds, activities, programs, and personnel inquiries as a service to the Director of the FBI and his executive staff. It is one of the managerial controls available to the Director and as such, will consist of both vertical and horizontal reviews of all programs, functions, and activities to insure the proper internal controls are reliable and are functioning.

Independent, objective and constructive examinations through the inspection process are invaluable to effective management. It is important to know the manner in which programs and activities are being carried out at the point of operations, particularly where the operations are large, diversified, complex and decentralized or carried out at numerous or distant locations. The broad objective of the inspection process is to make constructive contributions to the improvement of the Federal Bureau of Investigation by focusing attention on conditions in need of correction or improvement, making critical evaluations thereof and recommending changes or other corrective actions.

At this time, I will attempt to answer any questions you may have.

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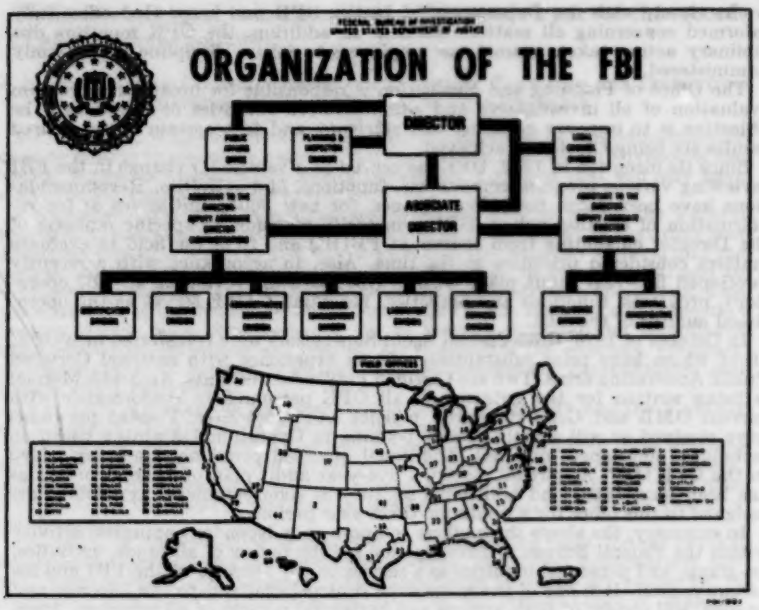
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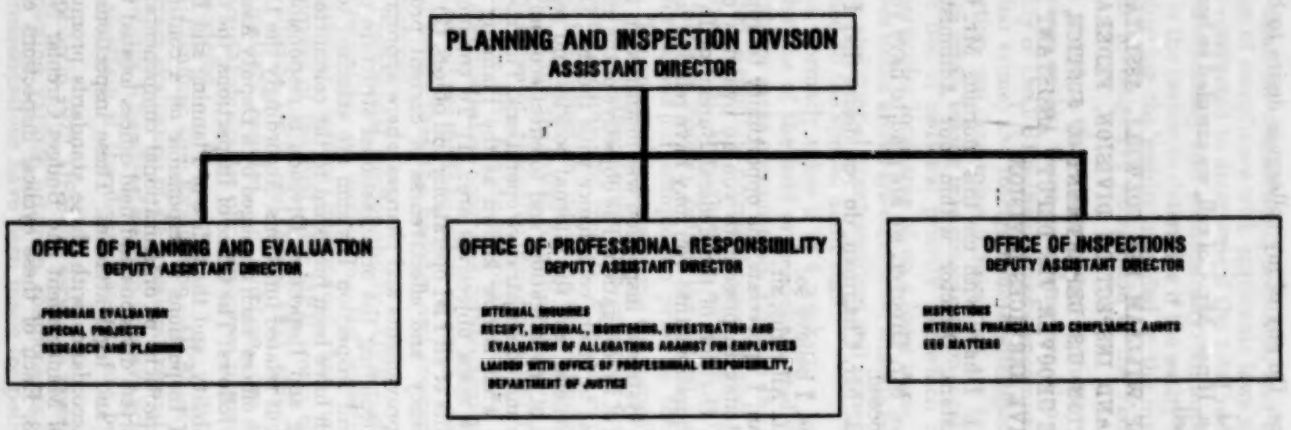
PLANNING AND INSPECTION DIVISION
ASSISTANT DIRECTOR
OFFICE OF PLANNING AND EVALUATION
DEPUTY ASSISTANT DIRECTOR
PROGRAM EVALUATION
SPECIAL PROJECTS
RESEARCH AND PLANNING
OFFICE OF PROFESSIONAL RESPONSIBILITY
DEPUTY ASSISTANT DIRECTOR
INTERNAL INQUIRIES
RECEIPT, REFERRAL, MONITORING, INVESTIGATION AND
EVALUATION OF ALLEGATIONS AGAINST FBI EMPLOYEES
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DEPARTMENT OF JUSTICE
OFFICE OF INSPECTIONS
DEPUTY ASSISTANT DIRECTOR
INSPECTIONS
INTERNAL FINANCIAL AND COMPLIANCE AUDITS
EEO MATTERS

Mr. EDWARDS. Do any of my colleagues desire to be heard at this time?

[No response.]

Mr. EDWARDS. If not, Mr. Colwell, we are glad to have you here and you may proceed.

TESTIMONY OF WILLIAM LEE COLWELL, ASSISTANT DIRECTOR, PLANNING AND INSPECTION DIVISION, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY L. CLYDE GROOVER, JR., DEPUTY ASSISTANT DIRECTOR, ADMINISTRATIVE SERVICES DIVISION

Mr. COLWELL. I have with me this morning Mr. Clyde Groover, a Deputy Assistant Director within our Administrative Services Division.

Mr. EDWARDS. Mr. Groover, we are glad to have you here.

You may proceed.

Mr. COLWELL. Mr. Chairman, do you desire that I read the statement?

Mr. EDWARDS. I believe so.

Mr. COLWELL. All right, sir.

Mr. Chairman, I appreciate the opportunity to appear before this subcommittee today to present to you an overview of the Planning and Inspection Division of the Federal Bureau of Investigation and to answer any questions that you may have relative to our duties and responsibilities.

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examination of financial transactions, accounts, and reports, including an evaluation of compliance with applicable laws and regulations. A review is also conducted to determine if the total resources assigned are being utilized efficiently and economically. An important phase of each inspection is the review to determine if the entity being inspected is effectively achieving the results intended in the investigative programs within the investigative jurisdiction of the Federal Bureau of Investigation.

Investigative programs have been given a priority by FBI headquarters, and cases within those programs are also given priority. The No. 1 priority of the FBI is the programs encompassing organized crime, white-collar crime, and foreign counterintelligence. During the course of inspection, we determine if resources are being used effectively in program areas, taking into consideration local crime problem areas which are not of national priority but which require priority attention in a particular local area or on a local basis.

All three phases noted above are conducted simultaneously by onsite inspectors, aides, and special agent auditors and nonagent accounting personnel assigned to the special audit staff.

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Since its inception in 1972, OPE has served as a vehicle for change in the FBI reviewing various program components, functions, and activities. Recommendations have been made for policy changes, for

new policy initiatives, or for reaffirmation of existing policy. OPE principally responds to specific requests of the Director emanating from sources at FBI Headquarters and from the field to evaluate matters considered priorities at the time. Also, in accordance with a recently developed 5-year audit plan, OPE is systematically reviewing all FBI operations, programs, functions, and activities. Essentially, OPE serves as the operational auditor of the FBI.

In October 1978, three special agent supervisors were transferred into our Office of Planning Evaluation, all of whom have prior substantial auditing experience with national certified public accounting firms. Two are certified public accountants. An audit manual is being written for the guidance of all OPE personnel in conformance with current OMB and GAO standards, policies, and procedures. Present personnel have received or will shortly receive training in operational auditing based on techniques developed by GAO. Additional qualified personnel are being added to the OPE staff. As already noted, a 5-year audit plan of all FBI programs has been formulated and additional audits will soon commence. Personnel are assigned to this office for a minimum 3-year period.

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Independent, objective, and constructive examinations through the inspection process are invaluable to effective management. It is important to know the manner in which programs and activities are being carried out at the point of operations, particularly where the operations are large, diversified, complex, and decentralized or carried out at numerous or distant locations. The broad objective of the inspection process is to make constructive contributions to the improvement of the Federal Bureau of Investigation by focusing attention on conditions in need of correction or improvement, making critical evaluations thereof, and recommending changes or other corrective actions. This also is an important responsibility of our Office of Planning Evaluation.

At this time I will attempt to answer any questions you may have.

Mr. EDWARDS. Thank you, Mr. Colwell. Pursuant to the House rules, we will be operating, for the first round at least, under the 5-minute rule.

The gentleman from Missouri, Mr. Volkmer.

Mr. VOLKMER. Will you tell us the number of employees that you presently have within your division?

Mr. COLWELL. Yes, sir. We have 70 special agent supervisors and 22 support personnel including stenographers and nonagent accountants.

Mr. VOLKMER. And how are those allocated out among the three subordinate units within the division?

Mr. COLWELL. In our Office of Professional Responsibility we have five special agent supervisors including the deputy assistant director and one support employee.

Mr. VOLKMER. And the Office of Inspections?

Mr. COLWELL. In the Office of Inspections we have 47 special agent supervisors including the deputy assistant director and 18 support employees.

Mr. EDWARDS. Will the gentleman yield at this point for an important question brought up by the GAO on that particular point?

Mr. VOLKMER. I was going to get to it, but go ahead.

Mr. EDWARDS. Are these rotated or are these permanent personnel?

Mr. COLWELL. In the Office of Inspections?

Mr. EDWARDS. Yes.

Mr. COLWELL. They are rotated.

Mr. EDWARDS. So they are street agents?

Mr. COLWELL. No, they are not street agents. They are FBI headquarters supervisors who are considered candidates for promotion to the position of assistant special agent in charge or special agent in charge in our field offices.

Mr. VOLKMER. Are the Office of Professional Responsibility people permanent?

Mr. COLWELL. They are permanent to the extent that we require them to serve approximately 3 years or more in that capacity.

Mr. VOLKMER. Then the balance, I assume—you've got 47 and 5 so that's 52, so you have 18 over in the Office of Planning and Evaluation?

Mr. COLWELL. No, we have 17 in the Office of Planning and Evaluation, including the deputy assistant director plus two support employees. The difference in the figures are myself and my secretary.

Mr. VOLKMER. Right; 1 plus 1. Now, in this year's budget is there any increase contemplated for 1980 in any staffing, or reduction or change in any way?

Mr. GROOVER. Mr. Volkmer, there is a net increase of $110,000 which is essentially pay or cost increases, uncontrollable increases, no personnel increases.

Mr. VOLKMER. That is the cost-of-living increase?

Mr. GROOVER. Yes.

Mr. VOLKMER. Now, is the Investigative Review Unit within the Division? It is not, is it?

Mr. COLWELL. The Investigative Review Unit?

Mr. VOLKMER. Right; it is outside this Unit, your Division?

Mr. COLWELL. That is correct, sir.

Mr. VOLKMER. Do you have anything to do with that unit at all? Are you associated with the Unit?

Mr. COLWELL. Mr. Volkmer, are you referring to one of the charts that we have?

Mr. COLWELL. I am having difficulty identifying the Investigative Review Unit—that is not a term that I am familiar with.

Mr. VOLKMER. we'll let it go; just forget it altogether.

Ms. LEROY. It is part of the Department of Justice.

Mr. VOLKMER. I know.

Ms. LEROY. I'm not sure he knows it.

Mr. VOLKMER. I just found it out.

In the Office of Professional Responsibility, then, in overseeing that, have you come in contact with the Investigative Review Unit?

Mr. COLWELL. No, sir. In connection with our Office of Professional Responsibility in the FBI, we are in contact on a daily basis with our

counterpart in the Department, which is the Office of Professional Responsibility. I was trying to identify the Investigative Review Unit in the FBI and was unable to do so.

Mr. VOLKMER. It is in Justice.

Mr. COLWELL. Right.

Mr. VOLKMER. OK.

Mr. COLWELL. We do not have regular or routine contact with that Office.

Mr. VOLKMER. Approximately how many cases has the FBI's Office of Professional Responsibility surveyed in 1978 and so far in 1979 fiscal year?

Mr. COLWELL. I believe in 1978 we had 351 cases.

Mr. VOLKMER. All right.

Mr. COLWELL. In 1979, as of February 28, fiscal year 1979, we had 161 cases we addressed.

Mr. VOLKMER. And those are being taken care of by five professional people plus one staff?

Mr. COLWELL. No, sir.

Mr. VOLKMER. Corr ct me; that's all right.

Mr. COLWELL. We do not personally, or through representatives of that Office, handle each allegation of misconduct against our employees. We delegate that authority on a case-by-case bas s to the special agent in charge of a field office or another Assistant Director at FBI Headquarters if it concerns one of their employees. The way we arrive at that decision is the seriousness of the offense, whether or not there is a possibility of that official being involved in the allegation or later becoming involved in the allegation. And we supervise that investigation.

Mr. VOLKMER. In other words, if the complaint concerns an agent here in Alexandria, made by someone, the agent in charge then would make the investigation?

Mr. COLWELL. He might make that investigation. It would be under our direction.

Mr. VOLKMER. If it was in San Francisco it would be more likely to be done out there than in Alexandria?

Mr. COLWELL. No, sir.

Mr. VOLKMER. It doesn't make any difference?

Mr. COLWELL. No, sir. Again it depends on the seriousness of the allegation.

Mr. VOLKMER. You have written guidelines to establish whether it's done out there or by in-house personnel?

Mr. COLWELL. We have criteria for that decision, but again it is made on a case-by-case basis. It depends on the seriousness of it. If it is more economical for the person in Alexandria who is in charge of that office, or the one in San Francisco, we will delegate that authority to that individual.

Mr. VOLKMER. My time is up. Thank you, Mr. Chairman.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

In March 1976, the Department's Office of Management and Finance issued a eport called "Organized Crime Intelligence," a review of the organized crime intelligence program. The study is somewhat outdated by now. It does represent the sort of program

evaluations that the Department and the FBI ought to be conducting in response to section 5.

Are you familiar with the Department's March 1976 report on organized crime intelligence?

Mr. COLWELL. I was in the past, Mr. Hyde.

Mr. HYDE. Reasonably familiar with it?

Mr. COLWELL. Yes.

Mr. HYDE. Is this the sort of evaluation of major programs that your Division contemplates doing?

Mr. COLWELL. I am not sufficiently familiar with it from a memory standpoint to make a comparison with that report as to what we should be doing today and in the days ahead.

If I may answer the question in this way, our present policy and procedure is designed to effect evaluations of our programs. We have included the guidelines established by the General Accounting Office, and relied heavily, in setting up these criteria, on the Department's audit manual. I think, unless they have changed their own manual since 1976, it would fit the same format as is set forth in that report.

Mr. HYDE. Do you think your Division has adequate resources to conduct such evaluations of major programs on a regular basis?

Mr. COLWELL. I do. I also think that there is room for improvement, and I think that improvement is coming about in the next few months where we are adding to our staff people with educational disciplines and experience that will enhance our ability to conduct these evaluations.

Mr. HYDE. In other words, have you increased the qualifications of the internal audit staff?

Mr. COLWELL. Yes, we have.

Mr. HYDE. And what about the independence of the internal audit staff? Has that been increased?

Mr. COLWELL. Well, we believe that we are independent.

Mr. HYDE. No need to increase it, in other words?

Mr. COLWELL. Well, there is always room for improvement in anything that you do, but we believe that we are independent, that we do provide an objective, unbiased view to the Director. We report to him. We are not responsible to any other person in the FBI. As long as our selection process is good, I think we do have independence and can produce a good product for the Director.

Mr. HYDE. I am always uncomfortably amused at the military. When the Joint Chiefs of Staff all retire they suddenly start writing letters about how incorrect our military policy is, but while they are in office they are very supportive.

Mr. COLWELL. We have that experience, too, with some of our ex-agents.

Mr. HYDE. All right, thank you. I have no further questions.

Mr. EDWARDS. The gentleman from California, Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman. I have a very few questions of Mr. Colwell.

You are obviously familiar with the report of the Comptroller General that issued on January 17; is that correct?

Mr. COLWELL. Yes, sir.

Mr. MATSUI. I am sure you have had an opportunity to review the recommendations in the report. For example, on page 26—I believe

Mr. Hyde made reference to this particular matter—the apparent lack of coordination and cooperation between the Justice Department audit staff and your particular staff is discussed. Could you relate whether or not you believe the report comments are adequate and correct and, second, if they are correct, what recommendations would you make to rectify their complaints?

Mr. COLWELL. They were adequate and correct at the time the audit by GAO was conducted. Their audit inquiries were conducted during the period of late 1976 and 1977. We have improved that liaison with the Department. We meet on a quarterly basis with the representatives from the Department. And the purpose of that meeting is to set forth what we are doing and what we plan, and it is used by them as a planning vehicle in areas they will look into in the FBI.

Mr. MATSUI. What kind of information do you give to them? I would imagine you have an area that is somewhat sensitive here, unlike some of the other departments—classified information by informants and those kinds of things. How are those kinds of things handled?

Mr. COLWELL. We handle it on a case-by-case basis, and their need to know, bearing in mind any commitments of confidentiality that exist in connection with the particular area that they are interested in.

Thus far, in the most recent dealings with them, we have no problems that I am aware of.

Mr. MATSUI. You mean since when? Since this report?

Mr. COLWELL. No, since about mid or late 1977 or early 1978.

Mr. MATSUI. Excuse me, now. When was this report written?

Mr. COLWELL. The report was issued in January of this year, I believe.

Mr. MATSUI. When was the audit?

Mr. COLWELL. The audit by GAO covered a 2- or 3-year period from the time they instituted it until the report was released.

Mr. MATSUI. So the report was actually completed either late last year or early this year?

Mr. COLWELL. I think their inquiries were completed last year and the report was submitted this year.

Mr. MATSUI. You are saying there have not been any problems with you in the Audit Department of the Justice Department since when?

Mr. COLWELL. Since early 1978.

Mr. MATSUI. But the report still goes on to say——

Mr. COLWELL. I am not questioning the findings of the report.

Mr. MATSUI. But you are saying the problem has been rectified?

Mr. COLWELL. I am saying in my opinion we have no problems.

Mr. MATSUI. If the problems were rectified, why didn't somebody from your Division go to the Comptroller's office and say, "Hey, this is what we did." You must have gotten some preliminary documents on a draft report. Why wasn't that corrected in the draft report?

Mr. COLWELL. It was a failure on my part to recognize the problem as they perceived it as being serious. It was an oversight on my part.

Mr. MATSUI. I am surprised at that because it seems to be one of their major recommendations, the lack of coordination. So for you

not to be able to perceive that in the draft report seems difficult for me to understand.

Mr. COLWELL. We got the draft report in October 1978, I believe.

Mr. MATSUI. And you said in early 1978 the problem had been corrected?

Mr. COLWELL. Yes. I believe your question is why didn't I go to GAO and tell them we had corrected the problem.

Mr. MATSUI. So they could have added those comments to this document which was issued in January 1979.

Mr. COLWELL. I think you have to recognize what was happening within the FBI. We created the Division in late 1976, in September, and most of the people arrived in October. GAO's review was already in progress. That continued and they concentrated on all three offices through 1976 and 1977. We were restructuring our management philosophy within the FBI and we were meeting with the Department and briefing them on what was going on, but not the internal audit staff that they are referring to.

Mr. MATSUI. It is very troubling to me that I'd receive a document that I would spend time to read that was issued in January 1979 and you tell me that the problem has been corrected and it is all washed up or there is a mistake here someplace. I'm not going to spend by time reading information that is incomplete. Whose fault is it? GAO's?

Mr. COLWELL. I should have informed them that I believed we had corrected the liaison problem with the Department.

Mr. MATSUI. You say now with the Justice Department Internal Audit Division you give them information on a case-by-case basis?

Mr. COLWELL. Yes.

Mr. MATSUI. I would imagine they would need to see an overview of the situation in order to make an evaluation of the FBI, for example, the Terrorism Unit of the FBI. Explain how, if they only receive information on a case-by-case basis without being able to go to the files, they can do an adequate evaluation?

Mr. COLWELL. In our meetings with the staff in the Department, as I mentioned earlier, we outline what we plan to do during the next year. And that has become more formalized in the past 6 months. By "more formalized" I mean we give them a copy of what our evaluation program or plan is, and they tell us what areas they are interested in. If they want to look at anything we have done we make that available to them. We don't just distribute automatically copies of everything we have done. We have told them it is available and if they want anything to let us know.

You must understand we produce reams of paper in our inspection reports and our evaluation reports. It is there if they want to look at it.

Mr. MATSUI. My problem right now, of course, Mr. Chairman, is the fact that Mr. Colwell indicates that this Comptroller General's report is obsolete because of changes made prior to the issuance of this report. So that makes it very difficult for me to ask questions based on this report at this time.

Mr. COLWELL. Sir, if I may interrupt, I believe the only thing that would be changed would be that liaison.

Mr. MATSUI. That is the only thing that would be changed?

Mr. COLWELL. As far as I know. And as I said, that was an oversight on my part.

Mr. MATSUI. So everything else is a problem, apparently; is that correct? For example, I believe Mr. Hyde asked a question about upgrading of the audit staff which was a recommendation made in this report. You indicated that was done. Was that done prior to January?

Mr. COLWELL. We started that in October 1978.

Mr. MATSUI. Was that before or after you received the draft report?

Mr. COLWELL. When we received a copy of the draft report.

Mr. MATSUI. And you did not revise it.

I have no further questions at this point in time.

Mr. EDWARDS. Thank you, Mr. Matsui.

Continuing the same line of questioning, Mr. Colwell, because we think it is very important, we are interested, and I am sure you are interested, in these periodic evaluations and audits that not only the Department of Justice is, by law, to do—and I don't think they have done any since we enacted the law last year, section 5.

Has the Department been over and conducted in the FBI periodic evaluations of the overall efficiency and effectiveness of any FBI programs? Have they sent Justice Department auditors?

Mr. COLWELL. Yes, sir.

Mr. EDWARDS. On what issues?

Mr. COLWELL. They presently have ongoing assignments looking at our applicant investigation program.

Mr. EDWARDS. On applicants?

Mr. COLWELL. Yes.

Mr. EDWARDS. Yes.

Mr. COLWELL. Audiovisual facilities.

Mr. EDWARDS. Audiovisual.

Mr. COLWELL. And they are conducting a preliminary examination of the FBI's communications equipment.

Mr. EDWARDS. A preliminary examination of the telecommunications system?

Mr. COLWELL. The communications equipment, yes, sir.

Mr. EDWARDS. Would you describe those as program evaluations?

Mr. COLWELL. They are elements of programs.

Mr. EDWARDS. How many auditors do they have in there?

M . COLWELL. I believe they have three or four on-site auditors.

Mr. EDWARDS. Now, getting back to the GAO report—and we will send you some written questions on all of these matters—the GAO criticism on page 111 was that your reorganization has had positive results, but some of the earlier problems may not. They say the internal audit staff is still composed of temporarily assigned agents and the effect of this independence still exists.

How do you respond to that?

Mr. COLWELL. A retirement plan or law for FBI agents became effective in January 1978, requiring mandatory retirement at age 55.

Mr. EDWARDS. Do you have anybody left over 55 as of that date in management? Mr. Adams, I believe.

Mr. COLWELL. I do not believe he is over 55.

Mr. EDWARDS. He is not?

Mr. COLWELL. No.

Mr. EDWARDS. I apologize, Mr. Adams. [Laughter.]

Mr. COLWELL. As a consequence of that law, we had a tremendous turnover in our executive and senior supervisory level positions. As I indicated previously, we utilize our inspection assignment process as

a training vehicle for future managers in the FBI. We had and still have an inordinate turnover in that staff. We are now looking——

Mr. EDWARDS. That is done on purpose, though, that turnover. You are using your Inspection Division as a training ground, aren't you?

Mr. COLWELL. Yes, sir.

Mr. EDWARDS. Do you really think that gives appropriate independence?

Mr. COLWELL. We are looking at our career development program—we are reevaluating our policy decision as to whether or not it is essential to have people assigned to the inspection staff prior to assignment in our field offices.

Mr. EDWARDS. Well, the GAO is not the Bible, you understand. I'm sure the GAO is not always correct in the suggestions they make. However, they do criticize just what you then described that if you have these internal auditors who are basically in training courses, they do lose independence; they don't necessarily have the skills—No. 2 "Need for internal auditors to possess a different set of skills than agents has not been adequately recognized in staffing and training decisions."

How would these agents, who are your auditors, know how to do it?

Mr. COLWELL. We have in the newly formed—relatively newly formed—Planning and Inspection Division established a unit within the Office of Inspections. We call that unit the Operational Evaluation Team, which prepares profiles of an office and submits interrogatories to an office. In effect, what we have established is a supervisory structure over each inspector and the aide that he has assigned to him to assure that all areas are covered. We have done that to try to get to a further degree of stability and continuity and experience level within that office.

In addition, we have attempted to expand or enlarge the assignment period to the inspection staff. We are looking at it and we are looking at various alternatives, and we in the near future will be making recommendations to the Director so that he can make a policy decision as to whether or not to modify it.

Mr. EDWARDS. We hope this review today will help you make some suggestions.

Mr. COLWELL. I'm sure it will.

Mr. EDWARDS. Because it really seems to me that there hasn't been much change, that these inspectors are going out in the same old way, inspecting offices and making suggestions and the GAO lists some of the suggestions that the inspectors make and they really are not evaluations. They don't go into programs; they don't go into what the FBI should be doing in broad areas—we'll take white-collar crime or counterespionage or whatever, if any change should be made in these terribly important areas.

Actually, what the inspectors have come up with, as the GAO points out, really didn't amount to very much, "Reduce by four the authorized complement of special agents," and so forth. "Reduce the automotive fleet by one vehicle."

That's the kind of inspection that's been going on since 1924; right?

Mr. COLWELL. No, sir.

Mr. EDWARDS. No? Well, when I was an agent about 100 years ago, that's exactly what we were getting. They would come and check our

desks and open some files and look at them, and so forth. They were very thorough inspections. We were always disappointed when they arrived unannounced—no interrogatories in those days.

Mr. COLWELL. We don't have as a rule surprise inspections now. We changed our entire inspection format in late 1976 and early 1977. GAO took recognition of that, pointed out we could further improve it. And we have a genuine interest in improving it. We hope that we have improved on it in the past 2 or 3 months.

I think it is important to note how we use the inspection process and how we have and plan to further use our Office of Planning and Evaluation.

When the inspection staff goes out to conduct inspections over, say, a 24-month period, we see and the Director sees 59 pieces of how the FBI is doing. Inspection s primarily directed at how that special agent in charge is running that office. Is he complying with the laws? Is he running an effective and efficient organization there in that particular territory? Is he addressing the local problems of that State or those States? Is he addressing the national priorities that are set forth at the nationa! level?

But it does not give us a complete picture of how we are doing in organized crime or any of the major programs in the FBI. That's where we are relying on our Office of Planning and Evaluation to give a national look at how we are doing in a particular program.

So I think while it may appear that we are dealing in minutia with the inspection process, the GAO makes a good point, but we have evaluated that approach. It is not refined yet. We hope to do it this year.

As you probably know, based on your own experience, in the past we have taken a vertical look at an office. We go from top down to the bottom, to how many pieces of mail, or whether or not they need an additional car. We hope to make a system where the inspection staff will also look horizontally at what the office is doing, because you have suboffices within a field office that handle various investigative matters. And we have to pull that together so it will be more closely alined with the concepts of a program evaluation.

When we do that, then that material and information can be used by our Office of Planning and Evaluation in putting together a national evaluation of where we are in a particular activity.

Mr. EDWARDS. Well, then, you are saying that you are about to do exactly what the GAO suggests, that the Office of Planning and Evaluation will conduct broad-based programs and reviews of major investigative and priority programs; is that correct?

Mr. COLWELL. That is correct, sir. And as we have told you and we have told the Department, we are not ashamed of the fact that GAO made very good points. If I had my preference I would rather they would have come in another year or 2 years from now. Maybe they have enhanced or speeded, accelerated, our efforts. There is no way to assess that. No one likes to be criticized, especially when you recognize those deficiencies yourself and you have not been able to correct them in time to make yourself look better.

Hopefully, the next time GAO looks at our operations in the Planning and Inspection Division we will get a better report card. If I have anything to do with it, we will.

Mr. EDWARDS. Well, those of us who are elected officials don't like to be criticized either, but every 2 years we are criticized very critically.

Mr. HYDE. Sometimes terminally.

Mr. ASHBROOK. I think the GAO report was constructive.

Mr. EDWARDS. Mr. Ashbrook, I'd like to yield to you.

Mr. ASHBROOK. Thank you, Mr. Chairman. I have just been listening. I have been trying to go to the Subcommittee on Crime with LEAA oversight, and it is difficult to do both.

Mr. EDWARDS. We appreciate your presence.

Mr. Hyde.

Mr. HYDE. I have no further questions.

Mr. EDWARDS. Mr. Matsui.

Mr. MATSUI. Just one more series of questions, Mr. Chairman.

In a followup of the chairman's questions, sir, you indicated that you plan to do more planning and evaluation of some of the programs now; is that correct?

Mr. COLWELL. That is correct.

Mr. MATSUI. That gets down, then, to the basic issue of your division itself and the number of employees you have and how you are going to allocate your time. You have the three different areas of responsibility here—evaluation, professional responsibility, and inspections. Could you tell me the number of employees that are in the Division itself and how you plan to distribute these employees or how they are distributed now?

Mr. COLWELL. We have 47 agents in our Office of Inspections, and 18 support employees, which include nonagent accountants.

In our Office of Professional Responsibility we have five supervisory special agents and one support employee.

In the Office of Planning and Evaluation we have 17 supervisory special agents and 2 support employees.

And in addition to that, we have myself and my secretary, which makes a total of 70 supervisory special agents and 22 support employees.

Mr. MATSUI. I would imagine the 17 plus 2 in Planning and Evaluation have been there in January of last year, 12 months ago; is that correct?

Mr. COLWELL. No, sir, they have not. We have turned over the employees in that office to enhance——

Mr. MATSUI. My question wasn't clear. The number of employees that were working in this particular area—has it increased or remained the same?

Mr. COLWELL. It has remained the same in Planning and Evaluation, yes.

Mr. MATSUI. In other words, since the GAO report was done, you have had 19 people in this particular area, 17 plus 2—plus yourself.

Mr. COLWELL. Yes.

Mr. MATSUI. Right now you plan to have 17 plus 2 plus yourself, after the GAO report was done.

Mr. COLWELL. Correct.

Mr. MATSUI. But you plan to emphasize more strongly the Planning and Evaluation area? At least this is what you indicated to the chairman.

Mr. COLWELL. This is correct.

Mr. MATSUI. How are you going to do that with the same staff? Because you haven't been doing much of it at all right now. You acknowledge that. But you want to start emphasizing that aspect How are you going to do it with the same staff?

Mr. COLWELL. By redirecting the efforts of that staff. As I mentioned in the opening statement, that office has been the vehicle for change in the FBI for the past 6 or 7 years—things like the career development program, the role of the special agents in charge, the quality-over-quantity concept that was developed. We participated heavily in revising the statistical reporting of the FBI. So we have in the past addressed what we perceived as very urgent problems.

In addition, in the past 2 years the formulation of our budget process has changed to more clearly identify programs.

So it is more of an evolutionary phase that we have been going through. We have been crawling, compared with today's analysis of what we have been doing, but we have been performing very important and essential functions for the management of the FBI.

Mr. MATSUI. You are going to continue those functions, are you not?

Mr. COLWELL. We are going to continue those, but they are not as great as they have been and we are going to concentrate more in this office on the overall national program evaluation.

Mr. MATSUI. Tell me how you are going to do that. Because you say they are not as great. Are you telling me the 17 are not going to spend as much time as they have been on these other areas you have been talking about? Is that correct?

Mr. COLWELL. That is correct.

Mr. MATSUI. Well, describe one area that you are not going to spend any time on or less time on.

Please understand we did this yesterday with the Civil Rights Division of the Department of Justice and we are not trying to harass you but just trying to get some information.

Mr. COLWELL. We have looked in the past at what would not be called a program or an element of a program—it is a much lower level—but areas of concern. We have a career development program in place. We worked extensively on that.

Other examples of what we have done in the past and are still doing to a limited degree is flextime in our various offices. Employees have a staggered work shift. We have a lot of young employees in our support function who are marreid and have young children. We have addressed that.

We have addressed our filing systems, such as what we call an abstract. It is a mechanical thing in our reporting system. We have looked at the organizational structure of offices, our separate offices, and our clerical functions.

Mr. MATSUI. Mr. Colwell, you are not going to be doing these things then?

Mr. COLWELL. We are going to be doing those to a lesser degree. And we think that the divisions who have primary responsibility for that can do more of that in the future.

Mr. MATSUI. Let me just say this, then: You are telling us that next year when you come back before us with the same number of

individuals working in the Office of Planning and Evaluation, you will have not only a timetable but probably some evaluation of some of the programs of the FBI; is that correct?

Mr. COLWELL. Yes, sir.

Mr. MATSUI. And they will be completed and so we will have an opportunity to review the budget from a program point of view.

Mr. COLWELL. Yes, sir.

Mr. MATSUI. Thank you.

Mr. EDWARDS. Mr. Colwell, in two of the audits by the General Accounting Office that were requested by the subcommittee, one of the problems, of course, was that the FBI did not permit the GAO auditors to have any access to the files. There was always an agent standing in between, providing the auditor with summaries, rather than the auditor having any access whatsoever to the file. The GAO believes this is not legal, but that issue is still unresolved, and I might add will have to be resolved before any charter can be written, because it goes right to the heart of our system of government.

But in these two audits, one on domestic security, there recently have been allegations that the system didn't work, that whoever the agents were standing between the GAO auditors and the files, that these agents—and this is just alleged—manipulated the files so that the GAO auditors didn't get the right files all the time and didn't get the correct information.

Now, these allegations apparently were sent to the Justice Department's Office of Professional Responsibility. Can you bring us up to date on what the FBI has done in response to these allegations?

Mr. COLWELL. Mr. Chairman, I am aware of the allegation that you are referring to regarding access, and I have no information that that assertion, that the appropriate files or the appropriate material was not furnished to the representatives from the GAO, is correct.

However, that whole matter is a part of an ongoing matter with the Department of Justice, the Office of Professional Responsibility. And it also involves civil litigation.

Mr. EDWARDS. Yes, I understand that.

Now, how does the FBI view its role in these cases? In a case like this, do you make an ongoing independent investigation?

Mr. COLWELL. Any time we receive an allegation which involves misconduct or impropriety which is serious on the part of an FBI employee, yes, we either conduct the investigation directly or supervise that investigation.

Mr. EDWARDS. Now, the Department of Justice tells us, I think, that when the Department is involved in internal audit of FBI programs, the Department itself has very limited access to FBI internal reports, such as field office inspections, Office of Planning and Evaluation studies, and time accounting reports, which I believe you call TURK.

What access do you give to the Department of Justice when they are conducting audits and inspections of the FBI's operations?

Mr. COLWELL. We give them access except where a situation exists involving confidentiality. If we have been requested or we have assured someone of confidentiality, then the files are not made available. It depends on the particular area. If it involves foreign counterintelligence, there would have to be clearances of the people who are conducting the audit.

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I would like to address the point you are making in connection with access by the GAO and the Department.

It is important to recognize that we are still talking with GAO and the Department about this issue.

As a point of information, GAO's offices are located adjacent to my offices so we see them almost on a daily basis. It is not a situation where we have reached a point where the positions are solidified but rather they are still open to negotiation.

It is a policy decision that rests with the Director of the FBI and has to be worked out between the Director and the Attorney General.

Mr. EDWARDS. The gentleman from Missouri.

Mr. COLWELL. That is a troublesome area and I'd like to make another comment on it.

Mr. EDWARDS. Yes.

Mr. COLWELL. One of the important avenues available to us is the use of informants, and this issue always seems to come back to informants. And publicity of such a review can have a debilitating or chilling effect on our ability to operate informants.

So it is a difficult issue to address so that everyone is satisfied with the result. But we are interested in having oversight and having reviews of what we are doing. We want to assist GAO or the Department or whoever it might be in a way that their product is or does fit the test of an evaluation as outlined in the OMB circular.

Mr. EDWARDS. Well, thank you. I appreciate those observations, and I'm sure you recognize that the subject goes right to the heart of whether or not there will be a charter. And I think we also ought to recognize that the GAO is privy to strategic information of the most sensitive kind, having to do with thermonuclear weapons and our most important military secrets, and there has never been an allegation that the GAO has leaked or has gone to the newspapers with any secrets.

Mr. COLWELL. There is no question of integrity on the part of anyone. It is a policy issue and one that we are working on.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. Mr. Chairman, I'd like to continue on the same vein, in the same area, just for a minute. Let's go back to some fundamentals on your relationship with the internal audit from Justice.

You periodically send them results of the fleet inspections or, let's say, your Office of Planning Evaluation reviews. Do you do that regularly?

Mr. COLWELL. The inspect on report we regard as an internal management control device for use by the Director and other senior managers in the FBI. We have made available those reports to the Department auditors on request. We do not automatically send those out.

Mr. VOLKMER. You don't do it automatical y?

Mr. COLWELL. No, sir.

Mr. VOLKMER. So if they don't know what's going on they have no way of——

Mr. COLWELL. There is no question of that. They know we inspect each of our offices every 18 to 24 months.

Mr. VOLKMER. So if they want a copy, all they have to do is send a request every once in a while and say, "send us a copy"?

Mr. COLWELL. If they want to talk about a particular issue or see what we did in a particular area, what our reports says, all they have

to do s get in touch with us, whether by phone or personal visit or whatever.

Mr. VOLKMER. Then are you saying that there s better cooperation now than there has been between you and the Justice internal audit?

Mr. COLWELL. Yes, I'm saying as far as I'm concerned, there is.

Mr. VOLKMER. That's all I want to ask. I have to wait and talk to Justice now and see what they say.

Mr. EDWARDS. Mr. Hyde?

Mr. HYDE. Have you more to comment to Mr. Volkmer?

Mr. COLWELL. No, sir.

Mr. HYDE. I simply want to express my understanding and sympathy with the position on talking with the GAO about informants. I'm sure if there was some internal auditing being done on the New York Times about their sources, there would be fulminations that would extend to the west coast and to Alaska, and so you have an absolutely moral duty to protect your informants. So it is a delicate question, and I'm sure it will be resolved, hopefully to the enhancement of the informant program.

Mr. COLWELL. Yes, sir.

Mr. EDWARDS. I'd like to say amen to what Mr. Hyde said, because the informant program is very important to any police organization.

However, I'd like to ad that the GAO does not want to know who the informants are but is willing to have any amount of material that could lead to the identity of the informant excised or tape put over it, or whatever. So I think there might be some people who think that this is a strawman that can be knocked down, but I hope you will carry back to others in the Bureau how seriously we regard this particular issue. It is terribly important.

Mr. COLWELL. I will, Mr. Chairman, but believe me, we recognize the seriousness of the issue. But I will carry it back.

Mr. EDWARDS. There are some people—not us, of course—who say the FBI doesn't want the informant program looked at because the informant program is not all that it should be, which is something that your internal audit should determine. The allegations made against the informant, Mr. Rowe, are very serious in regard to the murder of Miss Lioso, and all that. It would have been very nice if your internal audit had discovered that.

Mr. HYDE. Let me say that I agree with the chairman. My interest is in protecting the identity of informants and not compromising the program. But short of that, any program ought to be looked at. So I support the chairman in what he has said.

Mr. EDWARDS. Mr. Matsui.

Mr. MATSUI. I have one more question. And I share both Mr. Hyde's and the chairman's comments, too. We certainly don't want any information that will jeopardize any individual or the Department in an adverse way. We just want to look at it for our function of performing oversight.

You indicated that you will increase through the Office of Planning and Evaluation some of the program evaluations. Do you happen to have a list at this time of what programs you intend to evaluate first, and the priority?

Mr. COLWELL. No, I do not, but I can refer to what was in the budget process.

Mr. MATSUI. Sure.

Mr. COLWELL. We plan next year, in fiscal year 1980, to get into an evaluation of our organized crime and white-collar crime programs. That is where we have the greatest commitment.

Mr. MATSUI. All right. And that will start when? July of this year?

Mr. COLWELL. It will start later this year, yes, sir.

Mr. MATSUI. And that is the only one you are going to be evaluating?

Mr. COLWELL. No, sir; there will be others. I don't have them here.

Mr. MATSUI. Could you provide to this committee a priority list—obviously, you are not going to be able to get your entire wish list done, but I'd like to see a priority list and a realistic evaluation of what programs you think you will be able to complete by next year at this time so when we have an opportunity to discuss this matter with you again 12 months from now we will have an idea of whether you have met your goals.

Mr. EDWARDS. I'm sure the subcommittee and Mr. Rodino and the full committee would appreciate this information—not the final set of priorities, but what you have in mind—by the time the Director testifies before the full committee on March 27. It would be helpful to have a few of these important areas where you intend to work.

Mr. COLWELL. Yes, sir.

Mr. EDWARDS. Counsel, Ms. LeRoy.

Ms. LEROY. To follow up on what Congressman Matsui was saying, do you plan to conduct those evaluations along the standards that the GAO has set out in its report?

Mr. COLWELL. Yes, we do.

Ms. LEROY. Also I'd like to ask a couple of questions to follow up on what the chairman was asking you earlier about the allegations that the FBI manipulated the files that were given to the GAO. I'm sure I understood your answer. Is the FBI's own Office of Professional Responsibility looking into those allegations?

Mr. COLWELL. We have looked into them.

Ms. LEROY. On your own initiative or in response——

Mr. COLWELL. When we received the allegation—the allegation was initially made, I believe, to the Department of Justice's Office of Professional Responsibility. They referred it to us and we conducted an inquiry——

Mr. EDWARDS. I don't believe they can hear you, sir.

Mr. COLWELL. All of it again?

Mr. EDWARDS. Yes.

Mr. COLWELL. The allegation was initially made to the Department's Office of Professional Responsibility. They, in turn, referred it to us, and we conducted an investigation of that and several other allegations, and furnished the results of that inquiry back to the Department's Office of Professional Responsibility.

Ms. LEROY. Do you know what the Department's Office of Professional Responsibility has done with that report at this point?

Mr. COLWELL. I know that they have reviewed it.

Ms. LEROY. But they have come to no conclusion that you are aware of?

Mr. COLWELL. Well, it is tied to civil litigation, and on that specific allegation I believe they have agreed with our findings.

Ms. LEROY. And you came to the conclusion that there was no——

Mr. COLWELL. That there was no substance to that allegation.

Ms. LEROY. Sometime ago—I think it was in the summer of 1977—the subcommittee staff and the chairman visited several FBI field offices and several U.S. attorneys on the east coast. And one of the offices that we went to was Newark, N.J. And at that time the Newark, field office was preparing for a special visit from the Planning and Inspection Division, I believe, and the purpose of that visit was that the inspectors were there to investigate charges that the Newark field office was concentrating too much of its investigative time and resources on nonserious allegations—gambling allegations, I believe—that at this time the Attorney General had said that the Bureau was supposed to concentrate on organized crime, that the Bureau in that office was not following its mandate.

Do you know what the results of that investigation were?

Mr. COLWELL. Yes. As a result of that——

Ms. LEROY. First of all, how do you go about conducting an investigation of that sort?

Mr. COLWELL. Well, when you have an allegation, of course, you start—I assume that is what you are talking of. The issue there was whether they were conducting investigations in areas that were identified as national priorities.

We look at their work through a review of the files, talk to the agents conducting investigations, talk to the supervisory staff, talk to the U.S. attorney and the assistant U.S. attorneys and the local law enforcement officers, and make an assessment of what an office is doing and where it is committing its resources. And we will make a statistical analysis of what percent of the manpower is devoted to a particular area.

Mr. EDWARDS. Can you hear Mr. Colwell? I think you will have to get closer to the mike.

Mr. COLWELL. We make a statistical compilation of where the resources are being spent. And——

Ms. LEROY. What do you mean by that? Do you mean who they are investigating, what sorts of figures?

Mr. COLWELL. No, by violation of the law—bank robbery, theft of Government property, or whatever it might be, or organized crime, white-collar crime, foreign counterintelligence.

And then that is discussed with the special agent in charge and the determination or conclusion is then made as to whether or not they are using too much manpower on programs that are not identified as national priorities. In other words, if they are spending excessive time on bank robbery investigations that cannot be justified, the field office will be instructed to deemphasize the concentration of manpower in that area and use them in priority programs of white-collar crime, organized crime and foreign counterintelligence.

Ms. LEROY. So what was the result in that particular case?

Mr. COLWELL. The result of that particular inquiry was a series of meetings between departmental representatives, the U.S. attorney and the SAC in that office. We feel that the direction has been modified, that it is back in an area now where it is supposed to be, concentrating on those areas that are of a national concern.

Ms. LEROY. How do you know that? Do you go in and do a followup?

Mr. COLWELL. One of the reporting systems that I mentioned that we have assisted the Bureau in preparing in the past 2 or 3 years is

a report that comes in on a biweekly basis, I believe, which is prepared by each agent in the office. The totals are prepared at headquarters, and that tells us on what area the agents are spending their time.

Ms. LEROY. At the end of the initial inquiry, was there a report? Was there a written document that was prepared to go from FBI Headquarters to the SAC?

Mr. COLWELL. Yes.

Ms. LEROY. Who else has access to those kinds of reports?

Mr. COLWELL. The Director of the FBI and his executive staff.

Ms. LEROY. What about elsewhere in the Department of Justice?

Mr. COLWELL. We discuss the contents of that report with departmental——

Ms. LEROY. What about the Congress? If the Congress requested a report like that, would you send it here? I don't mean for public distribution—if a Member of Congress wanted to see it.

Mr. GROOVER. We would be reluctant to issue that report outside of the Department because it is a raw report. It has to have modifications or adjustments to it to be meaningful. Standing alone it is not a comprehensive report.

Ms. LEROY. What about within the Department? If someone from the OMF in the Department asked for it, would you give it to them? For example, if the Justice Department decided pursuant to last year's authorization bill to conduct its own program evaluation of the Bureau's organized crime program, Mr. Rooney's office, would you show it to him?

Mr. GROOVER. Certainly we should show it to Mr. Rooney, without hesitation.

Mr. EDWARDS. Mr. Starek?

Mr. STAREK. I just have a couple of questions, Mr. Chairman.

I am curious as to why you halted the surprise inspections, in favor of interrogatories and announced inspections?

Mr. COLWELL. The primary reason we stopped the surprise inspections was to permit us to better prepare for the inspection and ask questions in an informed manner.

In addition, we did not want to come into an office if they were getting ready to commit large amounts of their resources for special agents to a particular investigation if the investigation was culminating to where they were going to make an arrest or something was coming up that the U.S. attorney had in mind that would take a lot of manpower.

So what happens when we put the office on notice, if they have a commitment like that, they let us know, and then we either move up the inspection to an earlier date or set it back 2 or 3 weeks or a month. I think it's a more realistic approach.

I am not saying that we would not utilize the surprise inspection if we had some indications that that would be an appropriate procedure to utilize.

Mr. STAREK. You have been engaging in this practice since December 1976?

Mr. COLWELL. Yes. Our first inspection under the new procedure was in December 1976, and then it's been proceeding since that time.

Mr. STAREK. How well has this been working? How have the field offices been doing compared to the inspections under the previous method?

Mr. COLWELL. We have asked our special agents in charge and individual investigative agents their views on the inspection process. We have also polled our senior managers at FBI Headquarters.

We are told that the inspection process is better; a more meaningful product for management use is available; it is constructive; it provides informative data to both the agent and the supervisor and the special agent in charge.

All of the reports that we have are favorable, but we still think we can improve on the changed system more than what we have already.

Mr. STAREK. I think you realize that both the GAO and some of the members of this subcommittee are concerned about the rotation of special agents in and out of the inspection units. Has the Director or you given any serious consideration to changing that procedure to make the inspection unit more professional—that is not quite the right term—a more permanent group?

Mr. COLWELL. Yes. We have given it serious consideration. We are still giving it serious consideration.

One of the devices that we have implemented to improve the permanency of the staff is the creation of this operational evaluation team with individuals who are assigned there for 3 years or more.

We also have created what we call within that office a special audit staff which is staffed with five special agent accountants and eight nonagent accountants. And that is a relatively permanent assignment in that we want them to stay there 3 years or more.

That has enhanced the stability or the permanency of the staff as far as tenure, in addition to the capabilities and the depth of experience of the staff.

We think we have had success in getting to a more permanent staff, a more balanced staff. The assignment provides valuable experience for our future field managers, but we recognize the need to have the experience and the depth of a permanent staff. And it is a very difficult balance to strike.

Mr. STAREK. I understand. It may be a very valuable training experience.

Mr. COLWELL. And the important thing is that we are looking at that on a continuing basis. It is just an issue that we do not seem to be able to resolve and say that we have a permanent staff and still accommodate the very real need to have people who do have a broadening experience on the FBI's operation.

Mr. STAREK. Thank you very much.

Thank you, Mr. Chairman.

Mr. EDWARDS. Have you audited your laboratory, your crime lab?

Mr. COLWELL. No, we have not.

Mr. EDWARDS. You haven't called in either agents or outside experts to see whether or not the instruments are properly calibrated, that they are doing a job that is appropriate to the advances made in science, and so forth? Or do you trust the people running it?

Mr. COLWELL. I don't—we have not done that.

Mr. EDWARDS. Do you have a pretty good idea? How do you know it's doing a good job?

Mr. COLWELL. I feel very comfortable with the job that they are doing based on my conversations with judges, with U.S. attorneys, with local prosecutors, with chiefs of police, with crime laboratory representatives throughout the country that I have occasion to meet from time to time, and based on the reports of our agents.

Mr. EDWARDS. I assure you, sir, that when the Federal Government offers revenue sharing you are not going to get much criticism, and that is a form of revenue sharing. And we hear differently. We hear from the State of California, for example, that their own crime lab is in many ways superior to the FBI crime lab, and that the crime labs in certain States send you the dregs, that they do the important work themselves, and then the work that is not terribly important they send to the FBI. Have you ever heard that?

Mr. COLWELL. I have not.

Mr. EDWARDS. Well, we talk to different people, perhaps.

Mr. COLWELL. I understand that.

Mr. EDWARDS. And an audit could find this out; correct?

Mr. COLWELL. It could, yes.

Mr. EDWARDS. How about the bomb disposal and bomb lab—has that been audited?

Mr. COLWELL. No, sir. I'd like to point out that it is not a requirement that a State laboratory or State police agency submit anything to our laboratory. If they have the facilities to conduct their own examinations, we encourage them to do so. What they send us is at their discretion, not ours.

Mr. EDWARDS. I understand that.

Mr. COLWELL. And there is nothing mandatory about sending the more important evidentiary items to us.

Mr. EDWARDS. Mr. Matsui?

Mr. MATSUI. May I just follow up on the chairman's comment, sir. You indicate that you have confidence that the crime lab is functioning properly.

Mr. COLWELL. That is what I said. But that would not preclude—because I have confidence in a particular program and its program manager does not mean we are going to omit that from an evaluation or an inspection.

Now, I assume the chairman was talking about evaluation of that lab. I believe that is what you said.

Mr. EDWARDS. That is correct.

Mr. COLWELL. We do conduct the routine periodic inspections of the laboratory.

Mr. EDWARDS. The LEAA, if you will yield for a moment——

Mr. MATSUI. Yes.

Mr. EDWARDS [continuing]. Conducted a study of most of the crime labs in the country, and without naming any of them said all of them were very deficient. They didn't give a prize to any single one. I'm sure your office is privy to that study. If not, it is very significant.

Mr. Matsui.

Mr. MATSUI. I have heard some of the same comments as the chairman with reference to the FBI lab, perhaps not as extensively as the chairman, but I am a practicing lawyer and may hear different people's views, too. But based on the U.S. attorney's comments or the people in the lab or the comments of others that might have a vested interest in this, is that a proper way to evaluate a function?

Mr. COLWELL. I in no way was inferring that that was our method of evaluating a function. I was responding to the question—I said no, we have not conducted an evaluation, and I was asked how I knew that was performing efficiently, and I responded in that light, "That

is what I heard and what I understand, and I have confidence that it is performing a good job." But that does not mean we will not conduct an evaluation of our laboratory or its functions.

Mr. MATSUI. Do you think that is a high-priority item?

Mr. COLWELL. In my judgment—the judgment of which we do first is up to the Director of the FBI. I would place the organized crime and white-collar crime, which are the ones where we are committing most of our manpower, first, and when we do those, get to such things as the laboratory.

Mr. EDWARDS. Mr. Colwell, this has been very helpful to us today, and I know this is the first time it has ever happened that this kind of a hearing has been held and in such depth on the particular function of the FBI. So I don't necessarily envy the fact that you had to be the first here, but I do think you did very well. But I do want to compliment the FBI—and I'm sure all members of the subcommittee and staff feel the same—about the number of very important changes that have been made, in priorities especially. The fact that you are paying less attention to things that local police can do and should be doing is really very important. We don't want a national police force that does work that local police are supposed to do.

You are to be complimented that the bank robberyburden has been lessened because most of the bank robberies in this country have to do with local people, although there will be some discussion about that later because some of the banks are disturbed, and certainly the lessening of your effort in fugitives is to be complimented. I think the priorities that you have selected are very important, white-collar crime, espionage, and organized crime.

One last question: Are you aware of some of these important studies? For example, LEAA funded a grant to Prof. Marshall Klinter of the University of Wisconsin to conduct a study on white-collar crime. Prof. Marshall Klinter, I believe, testified last Thursday before Congressman Conyers' subcommittee—a very impressive study. Do you have those kinds of studies, and do you have teams examining them and making recommendations?

Mr. COLWELL. The title of the circular escapes me at the moment that we get from LEAA, which identifies grants and sets forth the identity of the studies. GAO also puts out a publication and there is also a source book which identifies studies that are being made both at the local level and State level, as well as the national level.

We have an individual in our Office of Planning and Evaluation that reviews that and requests copies of those studies that we use, both from an information standpoint and for a guide to what is being done in communities for evaluations of programs and studies.

Mr. EDWARDS. Does anyone have any questions?

Mr. MATSUI. No.

Mr. HYDE. No.

Mr. EDWARDS. Counsel?

Ms. LEROY. No.

Mr. EDWARDS. Thank you very much.

[Whereupon at 1:15 p.m., the hearing was adjourned.]

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FBI OVERSIGHT

WEDNESDAY, MARCH 21, 1979

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 2237 of the Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Staff present: Thomas P. Breen, counsel; Catherine LeRoy and Janice Cooper, assistant counsel; and Roscoe B. Starek III, associate counsel.

Present: Representatives Edwards, Drinan, and Volkmer.

Staff present: Thomas P. Breen, counsel; and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The subcommittee will come to order. Today the subcommittee continues its oversight/authorization review of FBI activities by focusing on services provided for the assistance of State and local law enforcement programs. As with many other Federal programs, the share of resources allocated to deal with State and local responsibilities had grown steadily and, perhaps, too uncritically. With respect to the FBI, the proposed 1980 budget provides for over $78 million for direct State and local assistance. In addition, many millions more will be spent for programs that are of significant benefit to non-Federal programs. For example, nearly $25 million is proposed for telecommunications services and nearly $22 million for records management. Furthermore, many of the investigative responsibilities of the FBI overlap with the jurisdiction of State and local law enforcement agencies. To the extent the FBI has allocated resources to matters such as bank robbery and theft from interstate commerce, State and local enforcement programs have received Federal assistance.

The share of the FBI budget that acts as a kind of "revenue-sharing" program has become enormous. On the one hand, this assistance to State and local authorities has been responsible for vital improvements in the competence and effectiveness of the administration of criminal justice. The Federal Government is in a unique position to provide this help and guidance; I believe that to the extent Federal assistance is the only viable way to achieve nationwide professionalism in law enforcement, it must be maintained. However, the trend to increasingly expand this kind of revenue sharing has its darker side and must be examined closely for several reasons. First of all, as the American people and Congress conclude that Federal spending must be reduced, we must cut back in a number of areas; spending for services that need not be performed by a Federal agency obviously must be the first to be critically reviewed. Secondly, as a policy matter, I believe that Federal largess can weaken the independence of State

and local governments. In the area of law enforcement, it is a fundamental principle of our federalist system that the National Government has a very limited role to play. Federal assistance can undermine this policy.

Finally, I suspect that Federal generosity has led to waste. Where services are offered free of charge, they will be accepted even where the need is not great.

The Department of Justice apparently shares some of these concerns, for this year's budget submission as well as last year's show a reallocation of resources from services primarily benefiting State and locals, to those where a national effort is absolutely necessary. However, I believe this trend must be accelerated and can be without detracting from the FBI's role as a Federal law enforcement agency. Indeed, I strongly believe that freeing FBI to concentrate on priority areas of national importance will enormously benefit not only the image of the FBI, but also the overall effectiveness of the Federal law enforcement effort.

We are pleased to have with us today John J. McDermott, Assistant to the Director and Deputy Associate Director of the Federal Bureau of Investigation.

Before yielding to you, Mr. McDermott, are there any comments from our colleagues from Massachusetts?

Mr. DRINAN. No; thank you, Mr. Chairman.

I welcome Mr. McDermott and his associates, and I look forward to hearing from him.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. Mr. Chairman, I believe that when we evaluate the total program, which has sharing of responsibilities and also which provide benefits to the States and local governments, I believe when we look at them as to their purposes, et cetera, we can also perhaps in the future arrive at a more closely knit working arrangement with the State and local government on these, and that it will be less dictatorial policy from either the Congress or from the bureaucracy in the Federal Government.

Mr. EDWARDS. Thank you, Mr. Volkmer.

Mr. McDermott, we welcome you. Will you please introduce your colleagues at the table, and proceed with your statement?

TESTIMONY OF JOHN J. McDERMOTT, ASSISTANT TO THE DIRECTOR AND DEPUTY ASSOCIATE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION, ACCOMPANIED BY BELL P. HERNDON, ACTING ASSISTANT DIRECTOR OF THE FBI LABORATORY, JAY COCHRAN, JR., ASSISTANT DIRECTOR OF THE TECHNICAL SERVICES DIVISION, FBI, L. CLYDE GROOVER, JR., DEPUTY ASSISTANT DIRECTOR OF THE ADMINISTRATIVE SERVICE DIVISION, FBI, KENNETH E. JOSEPH, ASSISTANT DIRECTOR OF THE TRAINING DIVISION, FBI, ROBERT E. KENT, ASSISTANT DIRECTOR, IDENTIFICATION DIVISION AND CONRAD S. BANNER, DEPUTY ASSISTANT DIRECTOR OF THE IDENTIFICATION DIVISION, FBI

Mr. McDERMOTT. Thank you, Mr. Chairman.

Beginning at my extreme left is Bell P. Herndon, Acting Assistant Director of the FBI Laboratory.

The next gentleman here is Mr. Jay Cochran, Jr., Assistant Director of the Technical Services Division.

To my immediate right is L. Clyde Groover, Jr., Deputy Assistant Director of the Administrative Services Division.

The next gentleman is Dr. Kenneth E. Joseph, Assistant Director of our Training Division.

And the last gentleman is Robert E. Kent, who is the Assistant Director of our Identification Division. Behind me is Conrad S. Banner, Deputy Assistant Director of the Identification Division.

Mr. Chairman, I will now proceed with my statement.

Mr. EDWARDS. Please proceed.

Mr. MCDERMOTT. I have been asked to state at the beginning of my statement that the views expressed in this opening statement do not necessarily represent those of the administration, since the subject matter of my statement continues to be the subject of a study by the Office of Management and Budget, as well as by the Department of Justice.

[The prepared statement of Mr. McDermott follows:]

STATEMENT OF DEPUTY ASSOCIATE DIRECTOR JOHN J. MCDERMOTT, FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman, I appreciate the opportunity to appear before you today to discuss the services of the Identification, Laboratory, Technical Services and Training Divisions which I supervise as Deputy Associate Director.

The subject matter that you have asked me to address centers on the assistance these Divisions furnish to state and local law enforcement. Specifically, you requested that I identify the services and training we presently provide; the need for such services; whether the FBI is best suited to continue providing them and, if so, should the Federal Government continue to bear the full costs of such services.

I want to address these points for each of the four Headquarters Divisions I mentioned:

IDENTIFICATION DIVISION

The Identification Division has been the national repository and clearing house for fingerprint records since 1924 when an Act of Congress established the service at the urging of the International Association of Chiefs of Police.

Basically, the Identification Division receives, classifies, and searches fingerprint records of persons arrested or received into custody, as submitted by over 20,000 law enforcement or criminal justice agencies throughout the country. The submitting department is advised of the identification of prints with prior records and furnished those records; if there is no identification made, the submitting department is advised of the fact. These submissions are made part of the records of the Idenification Division.

In addition to arrest-related material, some agencies, authorized and approved to do so, may submit material for licensing and employment purposes.

Prints are also received and filed for strictly personal identification purposes, in the event of unidentified death, amnesia, or similar situations.

The Division now has figerprint cards for about 64 million persons, about 22 million being related to arrests, the other 42 million persons having been printed in connection with Federal employment, military service, alien registration and personal identification. The arrest-related cards are maintained separately.

Over 100 skilled latent fingerprint examiners, on request, scrutinize and test physical evidence for latent prints, compare prints found with those of suspects and provide expert court testimony. In Fiscal Year 1978, the Division handled 26,725 such cases, of which 9,971 were for state and local law enforcement.

Fingerprint identification training is provided to Federal, state and local law enforcement.

Humanitarian services are provided in posting "flags" on missing persons, and assisting in the identification of unknown dead persons. The Division's Disaster Squad furnished identification services on 124 occasions since 1940, including the air crash at San Diego on September 25, 1978 and in connection with the tragedy at Jonestown, Guyana, on November 18, 1978.

I think it pertinent to mention that our authority to provide arrest record services to Federally chartered or insured banking institutions, and to state and local Governments for employment and licensing purposes, will expire on September 30, 1979, unless renewed by this Congress.

Public Law 92–544, enacted in 1973, authorized such services; however, Public Law 95–624, the "Department of Justice Appropriation Authorization Act, Fiscal Year 1979," prohibits such expenditures beyond the end of Fiscal Year 1979.

During Fiscal Year 1978, approximately 1,320,000 fingerprint cards were processed under authority of Public Law 92–544.

The need for a central clearinghouse was apparent in 1924 when it was established as the Identification Division. The increasing mobility of our society since that time has increased the desirability of maintaining such a central index as the interstate and international movement of criminals becomes commonplace. The person arrested for the first time in Florida may have a long record in Utah or an outstanding warrant in Vermont.

The central index provides a means of positive identification which permits a reliable answer to all inquiring departments.

If alternatives to the FBI's management of nationwide criminal identification services is to be explored, the most logical alternative to the Identification Division would appear to be the same central clearing house services, offered by another existing Federal agency or one established specifically to handle the required services.

There is no charge for the service provided by the Identification Division to local and state departments. It is apparent that any charge made for services would tend to discourage the use of those services resulting in a reduced law enforcement benefit to the public; also diluting the quality of applicants hired where checks are presently authorized for prior criminal records. A deterrent to the free flow of records to the Identification Division would logicaly erode the completeness of the files and their utility.

Large departments which have developed their own capabilities in the fields of fingerprint training, latent print examination, and identification of the dead would probably be least affected in those areas. Smaller, technically less capable agencies would probably suffer most.

LABORATORY

The FBI Laboratory is the largest crime laboratory in the United States, and has been in operation 45 years.

In addition to rendering technical and scientific assistance to FBI operations, conducting examinations, and provicing expert testimony in criminal matters investigated by us, the Laboratory also provides these forensic services at no cost to state, local and other Federal law enforcement agencies.

In Fiscal Year 1978, over 39 percent of the examinations by Laboratory and Technical Services Divisions were conducted for state and local agencies, a total of 189,360. These were conducted in the areas of Document, Scientific and Electronics/Acoustics matters.

The forensic services program insures that research is conducted and training furnished for local and state law enforcement personnel to foster maximum use of physical evidence through use of the most modern scientific techniques, for solution of crime and successful prosecution.

The FBI Laboratory has fostered the growth of local crime laboratories and progress toward their greater independence is continuing.

As part of its assistance program to state and local crime laboratory development, the FBI is now planning and designing a Forensic Science Research and Training Center (FSRTC) at the FBI Academy, Quantico, Virginia.

This has been strongly endorsed by the American Society of Crime Laboratory Directors and the American Academy of Forensic Sciences. The end result, it is anticipated, will be a decreased reliance by states on the FBI to examine physical evidence.

There is a pressing need for the scientific examination of evidence in law enforcement matters, some complex and costly, some requiring expensive equipment, all requiring qualified personnel.

During the past decade, primarily resulting from the availability of LEAA funds, many of the presently existing crime laboratories have developed and grown. Some laboratories and systems can now provide almost all of the forensic needs of the communities they serve.

The vast majority of the approximately 200 crime laboratories in the country cannot, however, serve the comprehensive needs of law enforcement. Forensic services of local or state crime laboratories are not available to every department, and many requests to the FBI Laboratory are referrals from laboratories which lack the comprehensive capabilities of the Bureau.

Without the FBI Laboratory many local departments would have no access to forensic examinations which are time-consuming, costly and sometimes very complex.

The only alternative to the FBI Laboratory's continued assistance to the state and local sectors would be the further development of state or regional crime laboratories which could offer more comprehensive forensic services than are now available, but at a cost of inefficient redundancy in procurement of costly equipment. Most existing crime laboratories are now lacking in qualified staffs, funds for the expensive analytical equipment required, or the comprehensive cababilities necessary to deliver a full range of forensic examinations.

The FBI Laboratory has cooperated in the training and research fields with other crime laboratories in an effort to enhance their capabilities.

Putting FBI Laboratory examinations for state and local agencies on a cost reimbursement basis would hurt those jurisdictions which need our services most. The jurisdictions which cannot provide their own comprehensive examination services would probably not be able to afford FBI examinations.

TRAINING

Since 1935, the FBI has given professional instruction to state and local law enforcement officers. Today, we annually train about 5,000 state and local enforcement officers at our FBI Academy at Quantico, Virginia. One thousand of these attend the FBI National Academy. They are selected because of leadership and management qualities and take a basic eleven-week course which provides instruction in Forensic Science, Management Science, Behavioral Science, Education and Communication Arts, and Law. The remainder take a variety of specialized, short-term courses. These range from white-collar crime courses which teach students to use computers as investigative tools in dealing with computer frauds and embezzlements—to hostage negotiation courses—to a Police Law Specialist course.

We supplement instruction given at the Academy with our Field Police Training Program. Courses are given throughout the country to state and local police agencies. These are also short and specialized and are often similar in course content to what we offer at the Academy.

Altogether our personnel train over 200,000 law enforcement officers each year.

We give instruction to these officers so that local and state law enforcement agencies may accomplish their assigned tasks more effectively and in strict accord with the requirements of Federal, state and local law.

The FBI believes that the combination of education, training, expertise, experience, and instructional ability which it can provide are not available elsewhere. This is definitely true for smaller communities and small police agencies. In some measure, it is also true for some of the larger police agencies. In many jurisdictions there are both police adademies and colleges offering courses in criminal justice. The instruction offered may often be of high quality, but much is also geared to covering the basics.

The FBI National Academy Program and Field Police Training Program provide continuing education to the police officer in sophisticated areas. It improves his competence in specific subjects. It permits him to acquire skills which help him deal with current and emerging problems.

The Crime Control and Safe Streets Act of 1968 and its Amendment of 1973 give us the authority to conduct this training. In connection with this legislation, Congress has also provided funds to cover the costs of training. This would include money to cover travel and subsistence expenses for those who attend the FBI National Academy at Quantico.

We are persuaded that the training we provide materially improves the capabilities of state and local law enforcement. We believe, too, that should the Federal Government cease to cover the costs involved, those most in need of this instruction would be unable to take advantage of it.

In 1976, it was proposed that local Government reimburse the Federal Government 50 percent and ultimately 100 percent of the cost of training their law enforcement officers. When this information reached the police community, the President of the United States, Congressmen, the Attorney General and the

Director of the FBI were deluged with mail, telegrams and calls from local, county and state officials protesting the proposed reimbursement requirement. They emphasized their dependence on the FBI for quality and timely training to enhance performance and professional development. In addition, they stated that local budgetary restraints could eliminate or greatly restrict the opportunity for their officers to participate in the training necessary to perform their jobs and meet the needs of their departments, communities and states.

We strongly recommend that the training of local and state law enforcement officers be continued by the FBI and that the Federal Government continue to cover the costs of this training.

NCIC

The FBI also administers the National Crime Information Center, known as NCIC. This facility is a computerized information system serving all criminal justice agencies in the United States. Additionally, the system manually interfaces with the Canadian Police Information Center, through the Royal Canadian Mounted Police. This interface grants Canada access to records relating to wanted persons, missing persons, and stolen property only.

The user agencies within the United States have access to information on wanted persons, criminal histories, missing persons, and stolen property. An officer with a stopped vehicle could, for example, run its identifying data through NCIC and determine within minutes if the car and possibly its occupants have some connection with a crime.

As of March 1, 1979, there were 6,847,547 active records in the file, including computerized criminal histories. During February, 1979 alone, NCIC network transactions totaled 7,389,508, or a daily average of 263,911. These are typical figures. Data contained in the NCIC is restricted to information documented by official police, court and corrections records.

By the authority of 28 USC § 534 and its implementing regulations, the FBI manages NCIC. An NCIC Advisory Policy Board, comprised of representatives from the criminal justice community, makes recommendations to the Director concerning general policy issues. Also, all changes or additions to current files and new procedures are coordinated with the states and localities who actually use NCIC.

The advantages of NCIC are undeniable. In a mobile society in which criminals easily move from one region to another, law enforcement, the courts, and correctional institutions can profit greatly from the information NCIC can provide. As an example, at the request of NCIC state control terminal agencies, FBI NCIC will make available magnetic tapes containing all Vehicle Identification Numbers indexed in the NCIC Stolen Vechile File. The tapes also contain the date of theft of the vehicle described in the record. The agency requesting the tapes can then make a comparison with state department of motor vehicle files to locate vehicles registered and licensed within the state while in a stolen status. In one state where this comparison was made, 560 "hits" resulted, and in each instance, the vehicle involved was registered after the date of theft in another state.

We believe that NCIC is indispensable. We also believe, for serveral reasons, that the FBI should continue to play a large role in its administration.

First, the usefulness of the computerized criminal histories depends upon close cooperation with our Identification Division. Only there can be found the technical data which provides the positive means of identification of those individuals for whom there are records.

Second, the FBI has 12 years of NCIC management experience. We know this system, and we know how to run it effectively.

Third, we believe the FBI, in its role as manager, enjoys the credibility of the public and of the users of NCIC.

Fourth, oversight by Congress is facilitated by keeping NCIC in the Federal establishment where its activities can be reviewed and its budgets scrutinized. We have no objection to, and in fact fully support, Congressional oversight and on-site audit by a responsible organization, such as GAO, which already occupies an office in the J. Edgar Hoover Building.

It is also our belief that the Federal Government should continue to fund NCIC. This avoids subjecting the system to financial decisions of the individual states, thus assuring adequate funding.

In April, 1976, former Director Kelley requested the Attorney General's permission for FBI withdrawal from the CCH program. This request was predicated upon the reluctance of a majority of states to join the system. When no answer had

been received during the ensuing year, the Director reiterated this request. Deputy Attorney General Flaherty instructed us to proceed with decentralization of CCH records to the contributing states and to develop a blueprint for a new CCH system. In furtherance of the latter instruction, we participated with Department of Justice personnel; Subcommittee staff officials of the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, United States House of Representatives; and criminal justice officials of twelve states in a fact-finding study which led to the Department of Justice plan entitled "Representative Viewpoints of State Criminal Justice Officials Regarding the Need for a Nationwide Criminal Justice Information Interchange Facility," March 6, 1978. At the present time the future direction of CCH is largely dependent upon the outcome of a study by the Office of Technology Assessment.

CONCLUSION

Obviously, it would be impractical to catalogue every service or type of training provided by the Bureau, and I have not attempted to do so. However, hopefully, I have identified those that are essential to effective law enforcement whether they are provided by the FBI or not.

As to who should provide these services, it seems to me that basically this requires that the providing agency, whether the FBI or another, have the confidence of the users of its services. I believe the FBI has the confidence of state and local law enforcement. It has been built upon a foundation of past performance marked by accuracy, efficiency and professional expertise.

With respect to cost, the services furnished by the FBI are, I believe, as cost effective as could be furnished by any agency. Any effort to charge for services and training we now provide cost-free would work to the disadvantage of many departments whose resources are now strained and who would necessarily forego what have been long accepted as essential tools of law enforcement. The consequences of foregoing these services would be severe. In the end, they could frustrate the essential missions of law enforcement—that is to prevent crime and to detect and successfully prosecute those responsible for crimes.

Now, I would be happy to answer whatever questions you may have.

Mr. EDWARDS. Thank you, Mr. McDermott.

The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman, and thank you, Mr. McDermott.

I can sympathize with your feeling that the funding arrangements should be changed, but as the chairman has suggested, Congress is under enormous pressure now to cut back on the Federal budget.

You say, Mr. McDermott, on page 10, that in 1976 it was proposed that the local governments reimburse the Federal Government 50 percent. Who was it proposed by?

Mr. MCDERMOTT. It was proposed by the Department of Justice, and I believe in concert with the Office of Management and Budget.

Mr. DRINAN. Well, you say that Congressmen were deluged with letters, but I had not even heard of the proposal before. So I do not recall a single letter received on that particular point.

What was the rationale of the Department of Justice and OMB in 1976 in recommending that the local government reimburse 50 percent?

Mr. MCDERMOTT. I can only conclude that it was proposed as an economic measure.

Mr. DRINAN. Well, let us talk about that for a moment, because you people do have authorization from this committee and the House to spend money to cover the training in Quantico of 5,000 law enforcement officials.

Could you give an estimate of the total cost of that particular program?

Mr. MCDERMOTT. The total projected costs for State and local police training, for fiscal year 1979, is $16,977,000.

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Mr. DRINAN. Does that include the 200,000 shorter courses that you people give throughout the country, or is that just Quantico?

Mr. MCDERMOTT. No; that would include both, the training at Quantico and the training at over 200,000 officers throughout the country.

Mr. DRINAN. Would it not be reasonable for the Congress to say that the people who participate obviously receive a benefit, and they should be required, for example, to pay their travel expenses? I know people who go from Massachusetts to Quantico, and they benefit enormously by the 11 weeks.

But should not the local government or the officer himself somehow be required to bear a part of those expenses? I do not know of any college that says to the students, "We will give you a free ride for every expense."

Would not the people appreciate it more if they had to contribute some share of it?

Mr. MCDERMOTT. My answer to that, Mr. Drinan, would be that the ultimate beneficiaries of the training are not the individual students but the communities in which they serve as law enforcement officers. And in many cases, if not most cases, the individuals, if they had to pay for this training out of pocket, could hardly afford to attend these sessions at Quantico.

Mr. DRINAN. It is a deductible expense to them and not to everybody else in the country who goes to school, whether they want to be an accountant or lawyer or hairdresser.

Let me come back to a point where I have the most serious questions—about the 1,320,000 people a year on whom you obtain fingerprints. All the banks get a free service from you when they hire personnel.

What would you think of a proposal that a private institution such as the First National Bank of Boston, when they want to hire tellers or janitors, should not be allowed to freeload on the Federal Government and get their clearances from the FBI for nothing?

Mr. MCDERMOTT. May I ask Mr. Kent to respond to that?

Mr. DRINAN. Sure.

Mr. KENT. We have attempted to outline what we feel would be the results of this proposal. I guess the definition as to whether this is a good proposal is whether there is a benefit to the community by requiring banks to do criminal checks on employees before they hire them. We think that there is.

And we think the service should be provided free of charge because we are the only organization that can perform that service now.

As far as charging them for the service, I simply do not know.

Mr. DRINAN. Well, all I am suggesting is that 1,320,000 people or entities or private corporations have a service that the taxpayers pay for, and I am just raising the question: Why should private institutions—leave out the State and local government for the moment—why should banks be able to get this obvious benefit to their security for free? Why do we not charge them $5, $10, $25 a person for clearance?

Mr. KENT. The only answer I can give is that legislation was enacted some time back which provided this service to them.

Mr. DRINAN. I know, but this runs out. This committee did not have authorization, until last year or the year before, and then we did extend Public Law 92-544 until September 30 of this year.

And it is within the power of this subcommittee, and the full committee, to say that there should be no more freebies to private institutions. If they want to take advantage of your services, then it seems to me that they should pay.

I'm not talking about the State and local governments. That is a separate question. But would the heavens fall if we did that?

Mr. KENT. No; I do not think the heavens would fall.

Mr. DRINAN. Mr. Chairman and counsel, remind me to propose an amendment that will say that the banks should pay the fee that they have to charge.

Now, I am worried about another thing, and this is really more important, the 1.3 million people every year that become a part of a bank at the FBI where now some 50 million or 60 million people have their fingerprints. I am certain that you people are more familiar than we are but I fear the chill that this gives to a lot of people about a universal identifier.

I wonder, Mr. McDermott, would you seek to react to that? I assume that all these people, the 1.3 million are applying for employment licensing or something like that. It seems a very large number to me.

But they have their fingerprints in the file forever. Do you think that this number is too many? Or do you think that the fear that I have expressed, which millions share—do you think that that is unjustifiable or defensible?

Mr. MCDERMOTT. Mr. Drinan, I think your apprehension is groundless, in that with reference to these fingerprint records that are sent to us for research at our central identification facilities, they are returned to the submitting company or agency. And after they have been checked, we do not retain them. They are not added to our holdings.

Mr. DRINAN. Why do 1.3 million people have to go through this process? How many of them turn out to have a record?

Mr. KENT. A very, very small percentage.

Mr. DRINAN. I know. Is this not needless, then, at the taxpayers' expense? This is an enormous expense.

How much does it cost the Federal taxpayers to do this process, to fingerprint 1,320,000, and then return them? And you say there are very, very few people with criminal records.

Mr. KENT. Most applicants have a very, very small hit rate. The banks only submitted 268,600 fingerprint cards in 1978.

The other 1,052,000 were submitted by other State and local employment and licensing agencies, for which there must be a State statute enacted which requires fingerprinting and prior approval of the Attorney General of the United States, We do not keep these fingerprint cards that are submitted to us for this purpose. We return them to the agency.

In 1971, we attempted to discontinue this service to the public, and we did discontinue it. We received, a great protest from the fact that we had discontinued this service. The money was then again appropriated and we were reallowed to furnish this service.

Again, if we do not process fingerprint cards for banks. the sky is not going to fall down. It is simply a question of whether or not we prevent people who have criminal tendencies from engaging in employment in a financial institution where there is a Federal Government insurance program which reimburses the bank, and where there

are additional costs to the bank and additional costs to law enforcement agencies to go out and investigate the crimes, because most of the Federal banking crimes are crimes investigated by the FBI and/or the local and State police.

Mr. DRINAN. One last question: For how many months was this program discontinued?

Mr. KENT. About 6 months.

Mr. DRINAN. Thank you very much.

Mr. EDWARDS. Continuing for a moment about the Identification Division that you do have, you do get prints received and filed for strictly personal identification purposes, in the event of unidentified deaths, amnesia, or a similar situation.

Who sends those to you?

Mr. KENT. To us?

Mr. EDWARDS. Yes.

Mr. KENT. Generally it is simply individuals who decide that they would like to have their fingerprints maintained in our files.

In the earlier years, the 1940's, this was quite a popular program in high schools. As our work responsibilities increased over the years—we have not encouraged the submission of these fingerprints.

We now have about 6 million of those fingerprint cards in the civil file, and we maintain them simply for people who want their fingerprints there for identification purposes.

Mr. EDWARDS. Do new ones come in regularly?

Mr. KENT. Yes.

Mr. EDWARDS. How many per year?

Mr. KENT. I would have to get that figure.

Mr. EDWARDS. I think we would appreciate that figure, Mr. Kent, because they do have to be classified after they arrive, and that involves some effort by your training personnel.

Mr. KENT. Yes; but they are not searched.

Mr. EDWARDS. Just classified.

Mr. KENT. We classify them and file them in the civil file.

Mr. EDWARDS. We would appreciate that additional information.

Now with regard to the subject that Mr. Drinan was interested in—and we do have to resolve that because the program ends on September 30, 1979, unless renewed—is that not correct, Mr. McDermott?

Mr. MCDERMOTT. That is correct.

Mr. EDWARDS. A State like Massachusetts, that is not part of the computerized criminal history but does send its criminal records to you by mail; is that correct?

Mr. KENT. Yes, sir.

Mr. EDWARDS. Do all the States send you their fingerprints by mail, except those few that go into the computerized——

Mr. KENT. The great bulk of fingerprints are sent by mail, but we also have about 60 law enforcement agencies that are on line to us for the facsimile transmission of fingerprints, relating to, suspected wanted persons, unidentified dead, and amnesia victims.

Mr. MCDERMOTT. Mr. Chairman, I believe you were inquiring what a State like Massachusetts would do, which is not in the computerized criminal history program. All States do submit their fingerprints to the Identification Division, fingerprints related to arrests.

Mr. EDWARDS. I think what I am getting at is: In a State, a sophisticated State like Massachusetts, California, Illinois, Pennsylvania, et cetera, New York, why would not the banks, the savings and loans, or agencies that are authorized to secure criminal records for their licensing for employment, submit the fingerprints to the State and move from there to the Federal depository, if necessary? Why should you have direct contact with banks, savings and loans—and I imagine with some State agencies that may be—babysitters in Florida, for example? Does that not seem to be going a little bit too far?

Why do you not just deal with the State police, the State police agency that has fingerprints and criminal records?

Mr. MCDERMOTT. Mr. Chairman, most of the States do not have the trained personnel at the State level to technically classify a large volume of fingerprint submissions. This is the basic reason why the submissions are made directly to our Identification Division, which not only classifies such fingerprints, but in addition conducts over a hundred advanced latent fingerprint schools a year to assist the people in the local sector, because of the very fact that they are so lacking in expertise in this field.

Mr. KENT. We do that now. Banks are one of the few types of nongovernmental agencies that submit fingerprint cards directly to us.

Mr. EDWARDS. Savings and loans, too?

Mr. KENT. Yes, sir, all of the financial group are covered by that.

On the other hand, in most instances the States first process the employment or licensing fingerprint card, and if that fingerprint card hits an arrest record which would be considered significant to the licensing agency they would not send the card to on us.

But there is no uniformity in this practice. California, for example, will not process bank applicant cards.

Mr. EDWARDS. In California—It is a Federal law and not a State law authorizing——

Mr. KENT. The States do process most of the other non-Federal employment and licensing fingerprint cards. We would prefer to have all fingerprint cards come through the State agencies, because this filters out a certain volume of this work for us. Then we do not have as large a growth in our work volume.

It has grown about 5 percent in each of the last 2 years.

Mr. EDWARDS. Let us assume that someone applying to be a janitor at a small bank in some city, and the request is made by the bank for the criminal records—and the fingerprints are sent to you here in Washington, and you search your records and find an arrest a year and a half ago, but no disposition.

What do you do?

Mr. KENT. Right now we would not send them back the arrest record, because we have adopted the screening policy, wherein if the arrest is over 1 year old, and there is no disposition reflected, we will not send that record out when it involves non-Federal employment or licensing. We eliminate that kind of arrest from the rap sheet we would send back.

In the case of a man who had one arrest and it was a year and a half old, and he had no disposition on it, the response that we would give them back is that we have "no arrest record or no arrest record meeting FBI dissemination criteria," regarding that person.

Now, the agency that receives this response is well aware of our policy regarding eliminating such arrest entries.

Mr. EDWARDS. Suppose there are 10 arrest records but no disposition?

Mr. KENT. Then again the same principle would apply. If the dispositions are not there and the arrests are over 1 year old, the arrest entries are not disseminated.

Mr. EDWARDS. Ten arrests?

Mr. KENT. Well, what we say is that we have "no arrest record or no arrest record meeting FBI dissemination criteria."

Mr. EDWARDS. I understand, and I think that is the proper way to proceed.

Does it disturb you at all? Well, these convictions or dispositions or arrests with dispositions, are they practically always a felony? Do you have misdemeanors in your criminal records?

Mr. KENT. In our criminal records we are and have been embarked on a program—I believe it was a decision in the district court—to eliminate nonserious offenses from our files. This is another screening process that we have adopted in the past 3 years, where we are at the instruction of the court, not disseminating nonserious offenses, such as drunkenness and disturbing the peace.

They are no criterion offenses. Again we have outlined for all of our users what the criterion offenses are. We no longer accept such offenses into our files and we have a continuing purging process to eliminate them from the records when we disseminate them.

It is a costly, time-consuming process for us. We get some benefit from our automation efforts as they also require us to review our files and this helps us screen that material out.

We are trying to get that information out of the file, and have been for about 3 years.

Mr. EDWARDS. Well, I think we have been on this subject probably enough for the moment.

My one final question is: Applicants for banking jobs, savings and loans, or applicants for State and local employment licensing purposes, in each case the person involved gives his or her permission by submitting fingerprints; is that correct?

Are you certain that in each case the person for whose criminal records you are searching has given his or her permission for this search to be provided?

Mr. KENT. Well, in the sense that you cannot very well take a fingerprint impression from a citizen if he does not want to give them to you—unless he is under arrest—and if it is for employment and licensing purposes, if he objects to it he could file a protest with the employing or licensing agency or with us, or——

Mr. MCDERMOTT. It would be a condition of employment or licensing, and in all cases the person signs a fingerprint card, personally.

Mr. KENT. For example, fingerprinting might be required for admission to the bar.

Mr. EDWARDS. I believe my time is up for the moment.

Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

Let me come back to the funding of the program at Quantico. With the new facility there now, I assume that more people will come, and as is well known, the DEA, Drug Enforcement Agency, provides only

free instruction and course material, and as I understand it, they require the State and local officials to pay for their own travel and lodging.

I would assume that the DEA has many customers, students, coming to their courses. Is there any reason to think that the same thing would not transpire for the FBI courses?

Mr. McDERMOTT. Mr. Drinan, while the Drug Enforcement Administration does not directly pay the travel costs, per diem costs, for students at their Academy, those funds are available to the attendees, through the Law Enforcement Assistance Administration.

And the Drug Ennorcement Administration has informed our people that were that funding not available to their students, they are convinced that the great majority of these students could not come to Washington for their training.

Mr. DRINAN. Well, some of that funding is in fact available under the LEAA, is it not? And this subcommittee does not authorize the LEAA. But as I recall, it is available to the DEA and would be available also to people seeking training in the FBI program.

Mr. McDERMOTT. Well, I think basically it is a question of which Federal pocket you take the funds from. I think it has been clearly established, Mr. Drinan, that the Federal subsidy has to be there to cover the cost of travel and per diem, else the great majority of these law enforcement officers could not——

Mr. EDWARDS. Would the gentleman yield at that point, because it is an appropriate part of—they get their travel, and I presume it is economy travel; is that correct.

Mr. McDERMOTT. Yes, sir.

Mr. EDWARDS. Do they get their room and board?

Mr. McDERMOTT. Yes.

Mr. EDWARDS. Do they get cash in addition?

Mr. McDERMOTT. No; they do not.

Mr. EDWARDS. So when you say "subsistence" you mean three meals a day and bed?

Mr. McDERMOTT. That is correct.

Mr. EDWARDS Thank you

Mr. DRINAN. Thank you.

Well, it is discouraging to think that the local communities are so disinterested in the professionalization of their law enforcemtn people that they would not even think of appropriating local or State money on a matching basis.

I am inclined to think that they would if they knew the value of these services, and the people of those communities recognized that they simply have to train their law enforcement people.

Well, on the question of laboratories——

Mr. EDWARDS. Mr. Drinan, would you yield at that point, because I want to get to a questiou on the same subject?

Mr. DRINAN. Yes.

Mr. EDWARDS. You provide training for foreign police at Quantico also; is that correct?

Mr. McDERMOTT. Yes, we do, Mr. Chairman, a limited number, very limited number.

Mr. EDWARDS. How many were provided training last year?

Mr. McDERMOTT. May I have Mr. Joseph respond to that?

Mr. EDWARDS. Yes.

Mr. JOSEPH. Mr. Chairman, during fiscal year 1978, we had 29 foreign officers represented in out FBI National Academy program in Quantico.

Mr. EDWARDS. And did you pay the travel from the foreign country?

Mr. JOSEPH. No, sir, we do not.

Mr. EDWARDS. And you giving them three meals a day and bed?

Mr. JOSEPH. Yes, sir, we do.

Mr. EDWARDS. What countries were represented last year?

Mr. JOSEPH. Last year: Australia, the Bahamas, Canada, Egypt, England, Hong Kong, Indonesia, Japan, Malaysia, the Netherlands, Norway, the Philippine Islands, the Republic of China, Singapore, and Thailand.

Mr. EDWARDS. Do you have any rules with regard to what countries are not invited and what countries are?

Mr. JOSEPH. No, sir, not to my knowledge in the FBI. That would be a matter that the State Department would have to make some kind of determination on it.

Mr. EDWARDS. Is there a law authorizing that training by the FBI; do you know?

Mr. JOSEPH. Yes, sir. Our authority for training assistance, until 1968, came from the general authority granted to the Director of the FBI under title 5, section 23 of the United States Code, commonly referred to as our housekeeping statute.

However, in 1968, the Safe Streets Act of 1968, as amended in 1973, was passed. Section 404 specifically authorized the FBI to provide training to State and local law enforcement and to develop new or improved approaches, techniques, and systems, and equipment provided to improve and strengthen the law enforcement and criminal justice system.

The act also authorized the FBI to cooperate with the National Institute of Law Enforcement and Criminal Justice, under authority of the LEAA, section 515–C, which refers to cooperation of the State and local government or international agencies.

Public Law 19–559, amendment to the Foreign Assistance Act, Section 660, prohibited the use of funds for training of law enforcement officers of foreign governments. However, the Drug Enforcement Administration and the FBI were specifically excluded from these prohibitions.

Additionally, in our testimony before the various committees of Congress, we have indicated that we would be training foreign police officers. As the result, a request in 1962 from the late President John F. Kennedy, limited numbers of foreign police officers would be trained by the FBI.

Mr. EDWARDS. Mr. Joseph, do you have plans for this year to train some foreign police?

Mr. JOSEPH. Yes, sir. In our National Academy program, we have plans to train approximately 8 to 10 foreign police officials per session, and we have four sessions a year, sir.

Mr. EDWARDS. Thirty-five or forty? Something like that?

Mr. JOSEPH. Yes, sir.

Mr. EDWARDS. Do you know what countries they are going to come from?

Mr. JOSEPH. No, sir; not yet.

Mr. EDWARDS. Who will make that determination? The State Department?

Mr. JOSEPH. We receive requests from various foreign governments through our legal attaches and based upon the willingness of the foreign government to bear their air transportation to and from the Academy, we would offer training opportunities to them. I am assuming there would be no objection from the State Department.

Mr. EDWARDS. Thank you, Mr. Joseph.

Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

Let me bring up the question of laboratories and the costs, once again, of these. As I understand it, the FBI, on a cost-free basis, evaluates all evidence submitted by local and State law enforcement agencies.

I take it there is no statutory basis for doing this. It is just a custom. Is this consistent with the policy that the chairman mentioned earlier, or that is implicit in all of this that the Federal enforcement should be minimum, should go in the areas only where the State agencies cannot fill the particular needs of a region or area?

Would you give some evaluation of whether the free services should be continued?

Mr. MCDERMOTT. It is our opinion, Mr. Drinan, that these services should continue, for reasons that I expressed briefly in my opening statement.

The quality of the forensic science examination ability is rather spotty from State to State. There is no uniform excellence from State to State.

Some States have a very fine crime laboratory. Others do not. Some small law enforcement agencies do not have available to them, on a daily basis, a crime laboratory to which they can submit items of evidence, and they have come to rely upon us.

I do feel that the availability of the FBI laboratory to all these departments should continue in concert with the FBI's own program of attempting to upgrade and increase the capabilities of the forensic laboratories in various States and local jurisdictions, so that eventually those laboratories will become decreasingly reliant upon our laboratories.

Mr. DRINAN. Well, in the October 1978 report by the President's Reorganization Project, there is some evidence about the high cost of the way the FBI does this with agents used exclusively, in comparison with Customs and DEA and the Postal Service. All of those agencies use non-agent personnel in their laboratories.

Would you want to comment on why the FBI apparently feels justified in using exclusively agent personnel?

Mr. MCDERMOTT. Well, Mr. Drinan, we do not use exclusively special agent personnel as laboratory examiners. We have a mix between our agent personnel and support personnel.

Increasingly, in the future we hope to use—develop a greater percentage of support people rather than agent personnel for the purpose of freeing up the agents for the investigative function.

The agents that we do have in our laboratory, by and large, were originally recruited by us because of the scientific specialties that their

academic backgrounds represent. It has been our experience over the years that a forensic examiner, who can combine investigative experience with the scientific expertise, brings a dimension to the examination of questioned evidence that is not available from an individual who has not had that experience.

He stands in the shoes of the investigator in the field, whom he is serving, and through this introduction of the additional element of criminalistic background, he brings an added degree of sophistication.

We hope not to ever completely phase out the agent from the examiner position, but perhaps to decrease their ranks in the future.

I may ask Mr. Herndon to see if he has anything to add to that.

Mr. HERNDON. Mr. Drinan, I think Mr. McDermott answered the question quite well.

I might add that another reason we do require certain special agents in our laboratory operations are because frequently they are obliged by a major crime scene situation to go on the scene. And in some of our cases they are considered dangerous assignments in technical and scientific areas.

Therefore, we require that they have the training and background of a career law enforcement officer, also qualified in some instances to carry a weapon.

I am thinking of some of our agents in a bombing case, particularly a situation of a bomb in a public building over which the FBI may have jurisdiction.

And the terrorism act. There is an element of danger. We require our consultants or scientific experts to be agents.

Certain types of surveillance, photography, that type of work, should require an investigative, career law enforcement officer, because of the potential danger. So we feel that the agent does bring that added dimension, that experience required, particularly in our own FBI work.

But I can assure you, as Mr. McDermott indicated, we are trying to bring on board professional forensic scientists, in some areas where, frankly, we cannot find a special agent with qualifications, such as in metallurgy or instrumental analysis.

Mr. DRINAN. Well, I thank you very much, and thank you for your presentation. I hope that you people understand our position, that we have authorization and oversight of the FBI and Department of Justice.

The people of America are literally screaming for some cutback in Federal expenditures, and they do not realize all the services that the FBI and other agencies are giving to them.

I spoke with a group of municipal officials last weekend, and they had no idea that we remit $86 billion back to the States and to the local communities. And I do not think any of the hidden assets that are remitted by the FBI are included in that figure.

And it seems to me that the least we can do is identify the sources of benefits to the States and to the local communities, and possibly require them to pay some share of their own assets towards a continuation of these services.

I thank you very much, and yield back the balance of my time.

Mr. EDWARDS. Mr. Herndon, with regard to the laboratory again, have you had the laboratory audited by the General Accounting Office or an outside agency?

Mr. HERNDON. Mr. Chairman, as a matter of fact, the GAO is currently conducting an audit of our FBI laboratory and other Federal laboratory systems and has been for the past 6 months. That is currently underway.

Mr. EDWARDS. Is this the first time that it has been audited?

Mr. HERNDON. This is the first time we have had an outside audit from a congressional inquiry group, yes, sir.

Mr. EDWARDS. Well, is it not, from management's point of view, a little risky to have the people operating the various mechanisms within the laboratory auditing themselves with regard to calibration and all of these sophisticated things that the laboratory has to do?

Mr. HERNDON. We are obliged to maintain certain standards, because you must recall the end product of any scientistin the laboratory is testimony in court proceedings, where he is subject to vigorous and strenuous cross-examination.

As you probably know, a defense counsel thoroughly goes into the integrity of the examination, the procedures used by the examiner testifying, and that is where he is really tested, when he presents this findings or conclusions in a court of law.

We maintain very high standards as far as calibration of equipment.

Mr. EDWARDS. How do you know you do?

Mr. HERNDON. By reporting from my unit chiefs, who maintained equipment in their units, and we insist that they have the highest integrity of equipment available.

I might add——

Mr. EDWARDS. It is hard to tell, unless you have some outside people looking at it—have your people judging their own work.

Mr. HERNDON. For instance, our scanning electron microscope, we have a contract with the manufacturer. They are scientists and they come in and continually calibrate and maintain the highest degree of standard of that particular piece of equipment.

We do have to have outside maintenance, of course, on calibration.

Mr. EDWARDS. Thank you.

Now, the major services that are available for the prosecution, do you make it available for the defense?

Mr. HERNDON. In some instances, in recent years, that has come about. We have been subpenaed by defense counsel and we have testified on occasions for defense counsel, yes, sir. But our services are normally made available to the law enforcement agencies.

And back to Mr. Drinan's question, there is statutory authorization, for the function of the FBI laboratory's for local services, for States. And I can quote that——

Mr. DRINAN. No; that will be all right.

Mr. HERNDON. There is a statutory authorization basis for our services, free of charge, to the States.

Mr. Chairman, did I answer your question, sir?

Mr. EDWARDS. Yes; you did. Thank you.

Mr. Breen?

Mr. BREEN. Thank you, Mr. Chairman. I am not technically qualified.

Mr. Volkmer may not be able to come back and he wanted to ask one question, specifically in regard to the training at the National Academy, the breakdown of how much it costs per trainee at the National Academy, on the one hand and then the costs in the other

programs that are provided, the shorter courses, programs that are provided for the State and local people.

Necessarily, you would have to be paying on the average more for a person coming from San Francisco, paying their travel, that would cost more than somebody coming from Seat Pleasant. Could that be provided?

Mr. McDERMOTT. Yes, sir.

Mr. BREEN. OK. Thank you.

Mr. McDermott, you mentioned that there are not trained personnel for identification purposes, generally, out in the States, at least not enough to do the job that needs to be done on a day-to-day basis; is that correct?

Mr. McDERMOTT. That is correct.

Mr. BREEN. Are they better today than they were last year at this time?

Mr. McDERMOTT. We hope the picture is improving each year as our Identification Division provides runs latent fingerprint schools for State fingerprint people. And we have agents out in our field offices that also conduct training—field police training programs with reference to fingerprints.

The difficulty here, Mr. Breen, is that the FBI's Identification Division is the only—if I may use the word—"university" for fingerprint identification in this country. A lot of our people who have previously worked in the support capacity in our Identification Division leave us to take positions in State government and municipal government where their experience is important.

But it is because there are so few sources of instruction for fingerprint technical identification that there has resulted in a paucity of trained people in sufficient numbers to handle the volume of fingerprint submissions in all areas.

Mr. BREEN. Well, that was pointed out last year, when some of us were down in a number of the States, but North Carolina in particular, with Mr. Cochran and others. We ran into some people, alumni of the FBI's Identification Division, working in North Carolina. At that time we asked the representative, who was with—whether or not they could have a copy of the training manual that the FBI uses, because they are conducting their own training program down there to operate their facilities.

There was reluctance at that time, at least the person who responded did not know whether it was available, whether the Bureau could provide such manuals for their training.

Do you know what happened in that case, and what the policy today is with respect to providing training materials?

Mr. McDERMOTT. I am not familiar.

Mr. KENT. We gave material to them.

Mr. BREEN. Did they appreciate it?

Mr. KENT. Since most of them are graduates of the Identification Division, yes; I think they did.

Mr. BREEN. Is there some program ongoing now to provide that kind of training material to other States, or do you wait until somebody asks you for it?

Mr. KENT. No; we do not wait. As a matter of fact, I am now sitting on an Advisory Committee of the International Association for

Identification, which is a nationwide organization, to which representatives of all identification bureaus belong. We are engaged in a project to provide additional means by which to update the fingerprint processing capabilities of State identification bureaus.

One of the projects of that committee involves providing additional training materials to upgrade the services of the State bureaus, from the initial point of how to take fingerprints, clear on up through advanced training, such as we just provided for the State of New York.

We ran a new training program for their fingerprint technicians up there in an effort to increase their technical ability to make comparisons between fingerprints.

Mr. BREEN. Is it true or not that when you are talking about latent fingerprints on the one hand, and doing the identification of 10 digits, there are two different problem areas that we are talking about? One, latent has to do more with something immediate, where you do not have all 10 fingers to work with, as a rule. Is that not correct?

Mr. KENT. Yes.

Mr. BREEN. So there is a big difference in the process, is there not, because you have less to go on when you are trying to solve something, when you have one or two or partial fingerprints?

Mr. KENT. Right. In a crime scene fingerprint examination request, which we call a latent fingerprint case, the fingerprint is frequently very degraded in terms of what you get when you lift and photograph it. Your objective then is to make an identification. And you make that identification almost without exception, using a 10-finger card, which has either been submitted for elimination purposes or for some prior arrests.

Mr. BREEN. Certainly the Identification Division spends more time on work other than latent fingerprint work, does it not?

Mr. KENT. Certainly it does. The great bulk of our work in the Identification Division is actually a recordkeeping function, arrest records and fingerprint identification records.

Mr. BREEN. Some localities are doing their own latent fingerprint work. I think San Jose, Calif.—where the chairman is from—are they still using the automatic equipment, I think it is Rockwell equipment? Are they still using that equipment, or are any other communities using any such equipment?

Mr. KENT. I think there is some problem with the San Jose system, I am not qualified to say what its current status is.

There is today being marketed an automated latent fingerprint system which can make a comparison of a latent fingerprint with a computerized fingerprint data base which is stored in the system.

The most recent of these has been the one installed in Minneapolis-St. Paul. It is basically a latent system designed to compare latent fingerprints with 10-finger card data. This involves a relatively small data base.

Mr. BREEN. Yes. I have seen that system. That is not anything like what Rockwell is working on, which the Canadians are now using. though, is it?

Mr. KENT. Yes. I think it is very similar. Only the one the Canadians have is capable of having a somwehat larger data base to search against.

Mr. BREEN. Mr. Cochran?

Mr. COCHRAN. I was just going to say, Mr. Breen, if you are referring to a trip to St. Paul, we looked at the State system. What Mr. Kent is referring to is the newly acquired system by the cities of Minneapolis and St. Paul from Rockwell. It is not the same system as we have seen.

Mr. BREEN. It is?

Mr. COCHRAN. It is not what we saw when we were in Minnesota a year ago.

Mr. JOSEPH. Mr. Breen, may I respond to your earlier question as to the question of cost per student attending the Academy?

Mr. BREEN. Surely. Mr. Volkmer is here now.

Mr. JOSEPH. We figured the cost to be approximately $65 a day per student. This cost includes transportation, room and board, as well as salaries, equipment, supplies, and operating expenses while the student is in attendance.

Mr. VOLKMER. May I interrupt?

Mr. JOSEPH. Yes.

Mr. VOLKMER. Just give me transportation, room and board.

Mr. JOSEPH. The cost of that?

Mr. VOLKMER. The average cost.

Mr. JOSEPH. The average cost?

Mr. VOLKMER. Without allocating into that the salaries of the FBI personnel, utilities, and all that. I do not want anything else, operational papers or anything else. I just want the total transportation, with room and board.

Mr. JOSEPH. All right, sir.

Transportation costs on an average would run the Government approximately $225 per student, and the room and board would run approximately $6 to $10 a day.

Mr. VOLKMER. Room and board is only $6 to $10?

Mr. JOSEPH. Yes, sir.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. I would just like to add, you have, I am sure, an idea of about how many students you will be receiving in total this year? You have already gone through 6 months, and we have got another 6 months to go.

Can you give me approximately what it is going to cost us just for those items, transportation, room and board? You do not have to do it today.

Mr. JOSEPH. All right, sir. We will furnish that to you.

Mr. VOLKMER. In the current fiscal year, transportation, room and board, so I can have some idea. If we had next year, from now on, they pay their own way, how much it would be of a savings to the Federal Government.

It is interesting to know that the city fathers do pay their way for people to go from the State government, and for other reasons, even to come up here to ask for money. And guess who pays their way? The taxpayer.

If we are to improve the police in Hannibal, Mo., and he wants to send an officer up here for training, there is going to be better training.

The question I would like to ask on the forensic laboratories, we have those statistics here from last year, about 189,000. Is there any

way that you can allocate out of that the cost of man-hours on each individual request? Let us say a patient sample comes in for comparison. I am not talking about the laboratory costs per period, I am talking about man-hours.

Mr. HERNDON. Mr. Volkmer, we have attempted in the last year or two to try to come up with some figures of what it costs for us to conduct a forensic examinaton. We found, very candidly, that this is a very difficult area to get into from a cost accounting figure.

There is no typical, say, glass examination or serological examination. Each case that we receive—whether it be from our own Federal agencies, our own agents or locals—have varying different requests, a different number of specimens, a different approach that the scientists may make on that particular piece of evidence because of the contaminaton.

However, we have come up with some average and general figures. We know—as a matter of fact we addressed this committee—a serological examination, which is a blood grouping test, because of its great changes in the last few years of going from one system to nine systems, is averaging close to $500 a case.

Although that seems expensive, when you consider that this is usually in a violent crime, rape, homicide, we feel that to assist the prosecutor and assist the courts, evaluation of physical evidence is important.

Now, we have not charged the States thus far, and I honestly believe it would be very difficult for us to come up with a cost accounting basis, or bring on a whole new staff to figure what it would cost to charge a particular contributor for that particular examination. It would take almost another whole department to come up with those figures.

We are attempting, however, because of inquiries from this subcommittee, to better define what an examination costs. We are finding it a very difficult thing—as I think the States are also finding it—to come up with a cost figure per examination, because of too many variables.

Mr. VOLKMER. What would be the difficulty in establishing man-hours on an individual test?

Mr. HERNDON. Not as much a problem as a cost basis. As a matter of fact, I think we have a program wherein we can pretty well define how much time our examiners spend on a particular type of examination. We do keep track of that time.

Mr. VOLKMER. The lab technicians or the scientists or pathologists, or anything else, you know—at 10:30 today, I can keep track of time, can I not?

Mr. HERNDON. Those records are currently available, and Mr. Groover might have some records which are available.

Mr. VOLKMER. What I am exploring is the possibility, because not—just like I say, not allocating it to the other, you know. expense of operation itself, and not allocated into the State cost of the lab itself, because that's used also for the Federal. Am I correct?

Mr. HERNDON. Would you repeat that?

Mr. VOLKMER. The lab itself is used also for Federal?

Mr. HERNDON. Yes.

Mr. VOLKMER. But also indicating the time that is used specifically for State or local, and that way you are not averaging. You are

actually saying, "Here, this will do it," but "Here's our bill for $15 or $50" or whatever it is.

Mr. McDermott. To put it in perspective, it might be worthwhile to point out that only 39 percent of the examinations conducted in our laboratory are performed on behalf of the State and local authorities. The balance are conducted on behalf of either our own investigators or other Federal agencies.

Mr. Herndon. Mr. Volkmer, if I could add to Mr. McDermott's statement, we have received in the past a number of phone calls from State laboratory directors or State law enforcement officials where they are quite concerned, of course, with the economy within their own States. In fact, a number of them say, "If we cut out our own crime laboratory systems, will the FBI be able to continue to handle this?"

I assure you we are not soliciting business from the States. We are trying to help the States that cannot help themselves. We are also trying to develop a training program at Quantico which will further develop the States to handle their own forensic services.

And some States are quite adept at that at this time.

Mr. Volkmer. When I was going through—you know, maybe somebody already asked about Florida and Hawaii. I am just curious.

Florida is not a poor State, at least in—I look upon Arkansas and Tennessee and a few other States as a little bit poorer than—per capita income—than the State of Florida, although there are a lot of retirees.

But when you look here and see Florida with 33,092 examinations, I have just got to ask what is going on?

Mr. Herndon. The GAO is asking the same question, Mr. Volkmer. And as a matter of fact it is my understanding they have made inquiries to the State of Florida. We have personally discussed this situation with some of the crime laboratory officials.

The bulk of that work, I might add, is in the field of serological-type of examinations. There are a tremendous number of homicides and rape cases in Florida, in which they have asked for FBI support of their serological-type examinations.

But I believe your own congressional audit group, the GAO, might better give you the answer on that.

Mr. Volkmer. I mean Missouri, population-wise, is similar to Florida——

Mr. Herndon. It does seem unusually high, I would agree.

Mr. Volkmer. It was 11,960.

Mr. Herndon. I can explain that Virginia had an unusual number of organized crime gambling matters in which they had FBI assistance. Here again the State of Virginia has a very fine State laboratory system, but there are some examinations at which most or many of our States do not have capability to examine the evidence, a case in point being a very unique gambling situation where there is a high amount of paraphenalia picked up at the crime scene by the arresting officers.

They had several major gambling cases in which a large volume of examinations were conducted by our facility, where they did not have people specializing in gambling paraphenalia.

Mr. Volkmer. Since you have available, as I understand it—and correct me if I am wrong—the information as to man-hours, and you

have information as to the States, break it down. I would like to know total man-hours, you know, total costs for the States. Go back to 1978.

Mr. HERNDON. I think we could possibly provide that.

Mr. VOLKMER. If you cannot do that, give me the first 6 months of 1979. Your records might be more current.

Mr. JOSEPH. If I may furnish you now the cost to the Government for travel and room and board for fiscal 1979, for approximately 5,000 officers, travel would amount to $1,125,000. Room and board, $1,017,500, totaling $2,242,500.

These are local and State law enforcement officers.

Mr. VOLKMER. Thank you very much, Mr. Chairman.

Mr. EDWARDS. Did you say you could feed them for $6 a day?

Mr. JOSEPH. Approximately, sir, yes, sir.

Mr. EDWARDS. I would like to know the name of the store.

Mr. VOLKMER. Mr. Chairman, will you yield?

You have 5,000 of them?

Mr. JOSEPH. Throughout the fiscal year, yes, sir—1,000 local, county, and State law enforcement officers.

Mr. VOLKMER. What is the average?

Mr. JOSEPH. Well, sir, it is hard to give you an average stay. We have 1,100 that stay with us for 11 weeks. That is our National Academy program. We will have courses that run anywhere from a 3-day seminar to a 4-week seminar. It is based upon need.

Mr. VOLKMER. Thank you, Mr. Chairman.

Six dollars. I will have to tell my wife.

Mr. EDWARDS. Counsel?

Mr. STAREK. I would like to return to the subject of laboratories and ask if there is any way you know whether States are using the services for a second opinion. In other words, are they doing the testing in their own laboratories, and then sending the material to——

Mr. HERNDON. Mr. Counsel, we would like to believe they are not using their own State laboratories as a second opinion. But very candidly, we would not have any control of that.

If a prosecutor gets a report from a laboratory and then in turn sends that evidence out to another laboratory for examination, we probably would not know about it. However, the court system itself is sort of precluding that because of problems with the chain of custody of evidence.

So speaking generally to your question, I do not believe that you will find prosecutors or contributing agencies using more than one expert, because of the conflicting problems that they would have in the chain of custody of evidence.

Mr. STAREK. Thank you.

Do you have any way of determining or internally auditing the types of materials or the types of examinations that are requested by particular States? I know you have numbers, but I am thinking of the difficult level of the examinations.

You at least follow the trends, because you mentioned the Virginia gambling cases.

But are you able to tell whether or not they are using the laboratory services for particularly difficult examinations, or are they more routine examinations?

Mr. HERNDON. I believe you will find that the States tend to be using some areas that are more definitive, such as serology—getting

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back to blood grouping again—that States have trained technicians and examiners now that can do a certain amount of blood grouping work, but they are not fully up to the nine scientific procedures of grouping the blood, with today's modern technology.

So we will find frequently that our volume in serology is increased because the States can do maybe the A, B, O blood grouping but they cannot do the other eight.

We also find we are getting a trend in increased neutron activation analysis and the use of scanning electron microscopes. Many of the States cannot afford a quarter of a million dollar scanning electron microscope.

On the dilemma of whether a person who is dead committed suicide or was murdered, frequently goes to the evaluation of using scanning electron microscopes or neutron activation analysis techniques. Many of the States do not have that capability, and refer those to the FBI laboratory.

There are certain areas, because of advanced technology, that we are getting the work from the States—if I have answered your question.

Mr. STAREK. Yes; you have answered my question.

My other questions have all been answered, Mr. Chairman. Thank you.

Mr. EDWARDS. I would like to talk about the telecommunications system for a moment.

The NCIC includes missing persons. That is the only area covered by the NCIC where criminal activity is not involved.

How do you justify that, Mr. Cochran? How do you protect the confidentiality of a missing person? Sometimes missing persons are person who are exercising the right to travel.

Mr. COCHRAN. That is true, sir. There are a series of four very specific criteria that are set up to determine who and under what circumstances an individual can be entered as a missing person in the NCIC.

These criteria were adopted by the Advisory Policy Board as the only acceptable basis upon which such entries can be made. It was the decision of the governing board, based upon regional meetings, that this particular facility of NCIC, or service of NCIC, was needed, and would be beneficial to the law enforcement community.

The individual who is merely—who is of legal age, who is merely seeking to, if you will, run away, does not fall within the criteria of persons that can be entered into the system.

Mr. EDWARDS. Will you furnish for the record the four criteria?

Mr. COCHRAN. Yes; we will. I thought we had it with us today.

Mr. EDWARDS. Who is the judge of the criteria? The FBI, or the submitting agency?

Mr. COCHRAN. The submitting agency, the agency who enters the record.

Mr. EDWARDS. So it would have to be the police agency?

Mr. COCHRAN. Yes, sir.

The criteria are rather specific, and as I say, I will get them for you.

Mr. EDWARDS. How do you know that a police agency is not violating the criteria?

Mr. COCHRAN. Well, I would have to say the answer to that is, of course, we do not. But I believe if that were a practice within the

system that the condition would surface itself, in terms of complaints, either to the Bureau or to the appropriate authorities.

Mr. EDWARDS. And lawsuits?

Mr. COCHRAN. Yes, sir.

Mr. EDWARDS. Do you have any lawsuits against you because of missing persons?

Mr. COCHRAN. No, sir, we have not.

Mr. EDWARDS. You have some lawsuits pending, alleged violations of entires in the NCIC for wanted persons, where the people really are wanted?

Mr. COCHRAN. I believe in total—and I may be slightly off on these figures—but to give you an idea of the problem which—of course one is a problem. I do not mean to minimize it, but I believe the numbers of actions against the system, if you will, have totaled about six or seven in the entire history of this system, which is nearly 12 years old.

Mr. EDWARDS. Have judgments been made by the Federal Government as a result of any of these lawsuits?

Mr. COCHRAN. I would have to get you an answer to that.

Mr. EDWARDS. I think we would like to know, because if it was the State's fault that they sent you a wanted—if they entered in the system someone who was wanted for a felony and it turned out to be the wrong person, it was the State's fault, then really the Federal Government should not pay the bill.

Mr. COCHRAN. The four criteria for missing persons entry in NCIC, which I have located—if you would like to have them now—are a person of any age who is missing and who is under proven mental or physical disability or is senile, thereby subjecting himself or others to personal or immediate danger, that is one category of missing person.

The second one is a person of any age who is missing under circumstances indicating that his disappearance was not voluntary. Some one where some degree of force may have been associated or abduction associated in the disappearance.

The third category is a person of any age who is in the company of another person under circumstances indicating that his or her physical safety is in danger.

And the fourth category is a person who is declared unemancipated—as defined by the laws of his or her State of residence—and does not meet any of the criteria in the first three categories.

Mr. EDWARDS. Do you have the number of missing persons that have been located through entry in the system?

Mr. COCHRAN. I do not have the figures.

Mr. EDWARDS. I think we would appreciate that. That is a rather extraordinary service to offer. You would agree?

Mr. COCHRAN. Well, it is really a continuation of service that has always been available through the Identification Division.

Mr. EDWARDS. Live people?

Mr. COCHRAN. There are records relating to live people in the Identification Division's missing persons program too, sir.

Mr. EDWARDS. Mr. Cochran, in our communication with the police departments here and there, there are complaints about downtime in the NCIC. One police department in a nearby State that I visited the other day, they had stopped submitting entries into the NCIC because they were backed up with 200 entries and the downtime was more than 2 hours.

What are you doing about that?

Mr. COCHRAN. We have just recently completed a survey and overhaul attempt, if you will, within the NCIC system, in an effort to determine what if anything we can do to correct the situation.

I have some figures here which I would like to quote to you Congressmen, which cover the period of June through November 1978—unfortunately, they are the most current ones I have—which indicate that mean time between failures in NCIC during that period, following this preventive maintenance and our concerted effort to do everything possible within the framework of the equipment that we currently have to correct the situation, the mean time—that is, the average time between failures in the NCIC system—was 27.5 hours.

What that figure means is that on the average, every 27.5 hours the system failed, because of the age of the equipment, principally.

The average downtime for those failures was six-tenths of an hour.

Now, there is additional time associated with getting the system back on the air because of the antiquated telecommunications equipment associated with it, that is, the front end processor which we—as you are well aware—have been seeking to purchase since the first time I was up here in 1977.

The average downtime for failure is about an hour, which means that roughly once a day, for 1 hour—and these are unscheduled downtimes, there is a system failure. They are not downtimes for maintenance purposes—so on the average of one a day, in round figures, the system is out for an hour.

That is totally unacceptable performance. We recognize that. We are doing everything in our power to correct it, but there are only two solutions.

One of the solutions, of course, is—as we indicated—the front-end telecommunications processor, which will take such functions out of the host computer and put them in the front end, and therefore, improve the availability of the system itself.

I believe it was the OTA study, that is, their preliminary assessment, that was addressed. And much as one might expect, they agreed that that was a technologically sound and feasible solution to a part of the problem.

The balance of the problem, of course, is to replace the host computer.

Mr. EDWARDS. You refer, Mr. McDermott, on page 14, to the blue booklet entitled "Representative Viewpoints of States and Criminal Justice Officials," et cetera. I take it then that the FBI generally approves of the recommendations made in that document, the recommendations that I am sure Mr. Cochran would agree would resolve the problems of downtime on the computer, would solve a great number of other problems; is that right, Mr. Cochran?

Mr. COCHRAN. I am going to have to refer back to the recommendations.

My recollection is that the principal direction or thrust, if you will, of this particular document is directed at the criminal history exchange under the NCIC system. Only peripherally does the function of the rest of the system come into play.

The major recommendations within the report, to the best of my recollection, relate to the decentralization of the criminal history records. They related to the need for message switching in order to

accomplish a decentralized criminal history record function, and the need to improve particularly the equipment utilized by the NCIC.

Mr. EDWARDS. Yes; that is right, even though the subject perhaps could be described differently. Implementation of—execution of this particular plan would resolve the things that you are talking about, because then the equipment was not objected to by this subcommittee. It was objected to by people in the other body, actually.

Mr. COCHRAN. We participated.

Mr. EDWARDS. We saw no objection to the purchase of that equipment that you wanted to buy, even though it had the capability that you referred to, because if the decentralization is carried out—and I would say the subcommittee is unanimously in support of the recommendations—of course, there would have to be some message switching with regard to the——

Mr. COCHRAN. Yes, sir, that was a part of former Deputy Attorney General Flaherty's instructions to us in April of 1977, and that is one of the essential reasons why we have not been able to fully comply with his instructions to date.

Mr. EDWARDS. Yes; I understand.

Mr. Breen?

Mr. BREEN. Part of the report that the chairman was talking about also indicated that the flow of fingerprints could possibly be diminished; that is, there are many fingerprint submissions to the FBI that could be rendered unnecessary if the system were a little bit organized at the State level, and possibly even by the FBI.

Does the Bureau support that concept, that there is a way to reduce the number of fingerprint submissions that come in?

Mr. COCHRAN. I do not really feel qualified to answer that, Mr. Breen. I think that is really more in Mr. Kent's bailiwick.

Mr. BREEN. Excuse me.

The proposal was that the State develop, or have developed, a central facility of their own, and not having individual police departments deal directly with the Bureau, weed out those that they can and get an identification by name alone. In many cases——

Mr. KENT. The function for which the Identification Division of the FBI was established was to make comparisons of fingerprints against fingerprints.

Mr. BREEN. I know, but of the fingerprints that come up, you do not have to do a technical search of all of them, by any means, do you? You do not have to classify them? You identify them in other ways, and then you verify them, your identification, by—in many cases?

Mr. KENT. By comparisons of fingerprints against fingerprints.

Mr. BREEN. Sure. But the States do a lot of that, and over a period of time, with your help, could develop the expertise and make this a little simpler for law enforcement, generally.

I think I am answering my own question, unless you have something to say about that.

Mr. COCHRAN. One slight addition to that—and Mr. Kent can supplement this if he sees fit—in my judgment, the Bureau has attempted, wherever possible, to cooperate with the States in the development of independent capability, whether it be the identification area, or the forensic science area, or whatever.

And I think, for example, that in the case of the State of Illinois, which in the recent past initiated centralized fingerprint card collection by its State identification bureau, we cooperated fully with them in setting up that particular capability, to the extent, I believe, that if records come in from other State agencies in the State of Illinois and do not come through the central bureau, we do not accept them.

Mr. BREEN. That makes sense.

Mr. KENT. We have that arrangement with a number of States including New Jersey and New York. It would be to our advantage to accept fingerprints from 50 contributors as opposed to 9,000 contributors.

The central feature of the plan that you proposed, or that you are speaking of—and all of the others that have been suggested during my 14 months in this job position, which is not too much historical background—is a need for a central fingerprint index or locator system, and that is basically what we are trying to continue to develop. I think that our efforts are compatible and complementary to whatever future configuration that the States might be able to develop and might be able to receive approval for, in connection with any decentralization proposal.

Mr. BREEN. The turnaround time in fingerprints is not improving very much, from what we hear from the State officials. And we notice that in your authorization submission, you requested 200 less positions in the Identification Division, although we understand that that reflects reality; that is, you have not been able to fill those positions, and as a matter of fact you intend to have more people working in the Identification Division—and I assume you hope to improve the service to the States.

I would like to know what the problem is in filling Government job positions. What is the problem with the Identification Division in that area? I am aware of a very large turnover there that the Division experiences. Can that not be addressed in some fashion?

Mr. GROOVER. We have a number of problems, Mr. Breen, in doing that. If you go back during the past 2 years, for example, some of it has been hiring problems per se, getting enough applicants. We do not have that particular problem right now. We have had some fairly stringent yearend ceilings, particularly when you have a Division as large as the Identification Division is, in terms of people, and the high rate of turnover that we have had in those type jobs, and the sheer replacing of the turnover, with the imposition of a ceiling or—in the case of the current year—a 3-month hiring freeze.

There has been no typical year since I have been involved in the financial management for the FBI. There are continuous problems which will affect that.

Mr. BREEN. Is the current freeze affecting the Bureau's ability to hire today in the Identification Division?

Mr. GROOVER. The freeze has been lifted as to the FBI. We are now working solely with the yearend ceiling for the end of the fiscal year.

Mr. BREEN. Yes.

Mr. KENT. Could I answer that question?

We recruit at a grade 2 and grade 3 salary level. The only requirement we impose is a high school education. And frequently the people that we get have a minimum prior job experience.

We very, very rarely find anybody to hire who has fingerprint, particularly technical fingerprint, ability.

If we find them, we generally cannot hire them because there is built into that group of citizenry, that we are trying to hire, a certain amount of job instability and turnover. I do not think as long as we recruit at those low salary levels, for that type of job, and for that age group, that we are going to ever completely eliminate our high turnover level.

Last year, we lost from the Identification Division 1,042 employees and they left for varied reasons: other jobs, marriage, to go to school, return home; for all the general reasons that come about.

We take these people and we train them. We invest in them training, and we would like to keep them a longer period of time. But that is one of the reasons we are attempting to automate the work functions of the Identification Division. We think automation will eventually enable us to eliminate a great deal of cost in bringing these people on board, recruiting them, training them, and having that high degree of turnover.

Mr. GROOVER. We have taken another major step in trying to overcome that kind of problem; that is, we have gone to regional recruiting to fill the positions here in Washington, instead of having 59 field offices recruit to staff the Identification Division, or other divisions here.

We now have our surrounding five offices conducting the recruiting effort for that.

Mr. EDWARDS. The United States Code, Title 42, Chapter 46, Subchapter 4, authorizes the Bureau and LEAA to establish a law enforcement training program. The law basically states that LEAA's training activity shall be designed to implement or improve State and local activities, and shall not duplicate the training activities of the FBI.

This is true of all training programs, not just forensic science training. The question is: How is the FBI coordinating its training and research activities with LEAA to make sure that no duplication exists?

Mr. MCDERMOTT. Mr. Chairman, I would like Mr. Joseph to address that more fully.

Mr. JOSEPH. Our efforts in attempting to respond to training requests around the United States revolve around our training coordinators that are located in each one of our 59 field divisions, as well as our special agents in charge. Many of them serve on training councils in their respective jurisdictions, to better identify the need, to determine whether or not training or education that would satisfy that need is really available to them.

If not, we receive periodic requests from our various divisions to develop new expertise in our effort to better enable or enhance local, county, and State law enforcement professionalism.

There are several of our staff members that serve on committees with LEAA to define, if you will, and to establish needs assessments around the United States. We work very closely with them.

There are occasions when we do undertake joint ventures where the expertise of both agencies can be utilized to the fullest extent. We feel that we are working very closely with them to insure that we do not duplicate each other's efforts.

Mr. EDWARDS. Thank you.

Now, with regard to training, again on the one hand, the FBI has stated that the purpose of its training program is to improve State and local law enforcement capability, yet the FBI also states that a number of areas of concurrent jurisdiction, if the Federal presence were withdrawn, the State and local agencies would not be able to cope with the responsibilities, not only because of lack of resources, but also because of lack of expertise.

Has the FBI or anyone else attempted to assess in a statistical way the State and local capability?

Mr. McDERMOTT. In the complaining areas specifically, Mr. Chairman?

Mr. EDWARDS. In the areas for which you train State and local people, including laboratory. It seems from the record that the more you train, the more you are called upon to provide services.

Mr. McDERMOTT. Mr. Chairman, our primary approach in field police training programs is certainly not to compete with existing resources on the State and local level but rather to complement and supplement that which the local agencies can do for themselves.

There are no two areas alike, obviously. We feel police training programs in each of our FBI offices is designed specifically to meet the needs of that area.

What is required in one area will not be required in another. The academic level and accomplishment of law enforcement training in one community differs from all others. And it is our purpose to deliver the services which are required for that community, and therefore, the program in each area is designed to meet the local need.

We try, wherever possible, to train police instructors attached to the local agencies, so that as they acquire the expertise and the ability in certain areas, they in turn can pass this on to others.

The purpose there is to have the local police academy and training facilities to become increasingly self-sustaining. And as we release people, our own police instructors then can be free to perform investigative tasks, in some cases, and in other cases, to acquire skills in instruction and training at a higher or more sophisticated level, which is still not available to the local authorities.

Mr. JOSEPH. Mr. Chairman, might I add just a brief comment. I totally agree with Mr. McDermott's comments.

In addition, we meet periodically at least twice a year, with the directors of the National Association of State Directors and Law Enforcement Training—that is one director from each State to help us identify those crucial courses that will help enhance individuals respond to their respective communities and States.

For example, we have identified the area of hostage negotiation, response to terrorism, the issue of executive stress in policing, as needs for the FBI to do more exploration in order to provide the kind of training which is not readily available elsewhere. But it is, in a practical sense that we teach the theories but, more importantly, the practical application of those theories.

Mr. EDWARDS. With regard to the laboratory, Mr. Herndon, you indicate that one of the goals of the laboratory Technical Services Division and a new training school is to foster the growth of local crime laboratories, and you state that progress toward their greater independence is continuing.

Yet the examinations requested by States is increasing.

How do you account for that?

Mr. HERNDON. I think there are two answers to that, sir. I think the fact now that States are developing and building crime laboratories, there is a greater awareness by prosecutors and law enforcement officers that there are forensic services available.

Therefore, I think because of that training and awareness, and the notoriety that forensic science has gotten in just the last decade or two, to help the court decide guilt or innocence, there is a greater use and reliance by policemen, by prosecutors, on laboratory systems. Therefore, both local and FBI statistics have gone up in the number of requests and examinations.

But we do feel that we are going to reach a point with our training and research facilities at Quantico that there will be less reliance by the State on the FBI laboratory system.

I might add, Mr. Edwards, if you look at the FBI laboratory's personnel, we have not expanded. As a matter of fact, we have gone down a bit. We prefer the States to stand on their own two feet with their laboratory systems.

I would imagine for at least a decade there will have to be Federal assistance at all levels, because we are the largest comprehensive laboratory in the country, to get the states to where they have the experience and expertise.

I do not believe, Mr. Edwards, that you can take the average college chemist or biologist out of an academic community and within 6 months or a year, have them a fully trained and qualified forensic expert. It takes time.

What makes a good forensic scientist, sir, is experience. So it is going to take them time for advanced training above and beyond what they get in the academic community.

This is why we are finding that both the States are increasing in work, and we are increasing in requests from the States. We do think there is going to be a time where we hope and we believe that the States' reliance on the FBI laboratory will decrease.

Mr. EDWARDS. Thank you.

Mr. Breen?

Mr. BREEN. Mr. Herndon, on training, I think the LEAA runs a program in Chicago, does it not?

Mr. HERNDON. On microscopic analysis.

Mr. BREEN. We are advised that the people are having no trouble finding people wanting to attend the school, and also that the people are willing to at least partially pay for their travel.

I think the partial payment probably makes the people more demanding of the service that is provided. I think that is a difficulty that happens perhaps with FBI training or other resources that are allocated to the State. Somebody who is getting it for nothing feels less like complaining about the service or criticizing it constructively, unless they are paying something for it.

That is just a philosophy. You do not have to respond to that at all.

Mr. EDWARDS. Would you yield?

Mr. BREEN. Sure.

Mr. EDWARDS. Supposing something comes in from a sophisticated State like California. That is supposed to have a very good lab. And

you can see immediately they should have done this work themselves. Why do you not send it back to them and say, "You have got plenty of money, why do you not do this yourself?"

Mr. HERNDON. We are currently doing that. Up to a few months ago we did not encourage or discourage submissions. We felt because of statutory authority that if a prosecutor or chief of police or sheriff sent in evidence, we felt obliged and should handle it because he wants help and sends it to us.

However, now, if we get a submission of evidence from a local contributor and we are well aware of the fact that they have the capability to do their own, the State to do that work, we contact the contributor to refer that work back to them for the local laboratory.

Likewise, any evidence that may be on narcotic examination, we immediately send the evidence back, unopened, with a letter that they send it to either their own State or the regional DEA laboratory which specialize in drug examination.

Mr. EDWARDS. Well, that certainly is a sound practice. When did you start to do that?

Mr. HERNDON. I would say within the last 6 months to a year.

Mr. EDWARDS. Well, then, we should be able to expect some of these big States, States with the capability of referring fewer samples to you—for example, I see California referring 8,000 cases to you last time. Perhaps next year or later in the year, when we are talking, it would be a smaller figure. In fiscal 1978 California made 152 requests for assistance Mr. Herndon—involving 1,567 specimens on which 8,042 forensic examinations were conducted.

Do you anticipate that?

Mr. HERNDON. Yes, we do, sir. We do believe, however, that there will always be some capability in which the States do not have their expert in that field. And let me name just a couple.

Forensic metallurgy is a relatively new field. There are only two forensic metallurgic experts in the country right now, qualified in the eyes of the courts. They are both affiliated with us, because in Federal cases, and certain FBI cases, as we have a need for a forensic metallurgist. We are getting work now from the States because they recognize that we have a unique capability in that area.

I mentioned gambling expertise. We have unique expertise in that field.

Occasionally, Mr. Edwards, we run into codes and ciphers, cryptanalytic examinations. We have code and cipher experts. So because we are the largest, we have the most versatility. There's going to be some areas where the States cannot afford, frankly, sir, to have an examiner in that field, because he might only get one or two cases a year. So they probably will rely on the FBI for a certain ratio of exotic examinations.

Mr. EDWARDS. Well, the figures are rather dismaying. Somewhere around 200 a day must come in from California alone. That is entirely too many.

Mr. HERNDON. That 200 a day might be one case that has a high volume of specimens that have to be examined individually. We must not think of examinations as being requests. There is a difference. In other words, we might only get maybe one or two cases a day from California.

Mr. EDWARDS. Your statistics are misleading then, do you not think?

Mr. HERNDON. For the scientist, the best statistic is the number of examinations that have to be performed. It may be one case, but it may be a series of various types of examinations that have to be performed on the cumulative evidence that is received in the case.

Mr. EDWARDS. Well, I think that we have always believed that there were several thousands separate requests.

Counsel, did you know the difference?

Mr. BREEN. No; I did not, Mr. Edwards.

Mr. EDWARDS. So 300 a day could be one or two cases?

Mr. COCHRAN. Our view has always been that examinations were the only really accurate barometer of the workload within the division. A case, a simple—what we used to call in the laboratory—"Q1–K1" case, bullet and a gun, is two examinations: one examination of the bullet and one examination of the gun.

But that case takes so much time, it is only measurable in terms of the number of examinations conducted.

Another case, homicide may have two to three hundred specimens in it that requires relatively large numbers of examinations. So if we just count cases we would not really have a valid way of measuring the work load within the division.

Mr. HERNDON. If I could add, Mr. Edwards, there is another point here. Because of the great improved technology of forensic science—which is a relatively new thing since the 1930's perhaps—you will find now that where scientists in the past used perhaps a flask and a test tube and a microscope, today he has at his fingertips all types of sophisticated instrumentation, and therefore in, say, a blood testing, where we used to do one procedure, nowadays we do nine to provide better evidence in a court of law.

Mr. EDWARDS. Well, I understand now what you mean. I will say I know it was unintended. For many years we have been talking about apples and oranges, because what you said in your statement, Mr. McDermott, in fiscal year 1978, 189,360 examinations were made.

We really did not know that it could have been 25 hairs and you counted each hair under the microscope as a separate case.

Mr. HERNDON. That is correct.

Mr. EDWARDS. So really it would help your statistics, insofar as understanding them, to be made clear.

Mr. BREEN. Automated Identification Division system, AIDS—and the subcmomittee has had access to that—and the audit report was helpful in many ways, although there are differences of opinion.

One of the things that was expressed was the problem about the AID system, totally, was the timetable. It has never really met any of the timetables that have been hoped for, I guess, and I notice in Director's testimony, in talking about that, that the sentence was used that invention has a history of defining timetable application, which I think means we do not know when exactly this thing will be working properly.

Does the Bureau have some view now as to what it looks like, the whole concept, I mean, including the finder, which I understand is also having technical difficulty?

Mr. McDERMOTT. I agree, of course, with Director Webster's position that invention is an area almost incompatible with firm prediction. This is in the pure research and development area. It is a unique piece of hardware, which is being developed, with unique software for it, too.

You can have milestones and you can have your goals, but because we are dealing with inventions, frequently expectations are not fully realized in the same timeframe as one would hope, and therefore we—our people in concert with Rockwell International Corp. people—have had to redefine schedules.

There have been disappointments. There have been achievements, but we are sort of drawing the map as we go along the road, and I am sure that Mr. Kent could be more specific as to what we recently have done by way of taking a fresh look at the contracts and proposing to take a harder look at an ongoing audit of Rockwell's progress, to more closely follow their progress.

Mr. BREEN. I would like to ask about that briefly, too.

One of the criticisms was the contracting procedures generally, and the Bureau's response was that differences of opinion existed between the Bureau on the one hand and the auditors on the other. I would like to know what is the arbiter of those differences of opinion, and how you are dealing with that problem today in terms of contracting for larger sums of money?

Mr. McDERMOTT. Yes; I appreciate that, Mr. Breen. And I will defer to Mr. Kent and Mr. Cochran in the specifics.

But in summary, we have recognized that there have been some shortcomings in the manner in which we have been working with Rockwell. Some of the comments of the auditors we accept as completely valid, and we have changed direction. We have changed the degree and quantum of supervision and oversight of the research programs.

But a lot of our difficulties have been caused by the fact that we are in an inventive atmosphere and there is bound to be slippage.

Mr. BREEN. One other question. The concept was really fully developed, I guess, in 1971 when the first contract—like, I think Rockwell would sort of design what a thing should look like in a few years.

It is possible that that concept was predicated on either technology that is so far off we do not have it in maybe our own lifetimes, or if it is sooner than that, that the cost—which is getting to be a very large item over the years—will justify the savings?

And if any of those things are true, will the FBI be willing to say, "We screwed up. We made a mistake, and we will pursue this in some other way"? Not to be tied to something that is innovative and exciting, but maybe will not work.

Mr. McDERMOTT. I can assure you, Mr. Breen, that we do not intend to engage in gimmickry ad infinitum. We only stay with a project for so long as we believe that it represents an extremely great advance in efficiency and cost effectiveness.

Mr. Kent, I am sure, has figures which he can offer the committee concerning the manner in which, over the long haul, this whole program will be completely cost effective from the standpoint of reduced staff that it will take to operate the Identification Division.

Mr. BREEN. I'm familiar with those, and I certainly would like to have more of an update on that, especially.

Since time is getting short, I would like to ask: Was that of value for the FBI at the time of the report, in looking at the program?

Mr. MCDERMOTT. Yes. We did feel it was of value. A good thorough audit is a very healthy procedure for any program mechanism, and it perhaps made us take a hard up-to-date look at our program, which perhaps we would not have done in the same timeframe.

Mr. BREEN. Last week at a hearing Mr. Colwell was here, and he was asked to furnish some time fairly soon ideas for audits that the Bureau would have on itself for the next fiscal year—nothing firm—because I assume he agreed, and we will agree, that such audits are useful, ought to be better institutionalized within the agency itself, of the Department, and maybe GAO. Is that correct? Is that your view that they are?

Mr. MCDERMOTT. Most certainly. And we welcome them. We do not for a moment believe that we have a corner on the market of intelligence or information or expertise, and frequently a look from another's perspective can be rewarding and very helpful.

Mr. BREEN. I assume also you have no objection to us submitting some questions on the general areas we have here?

Mr. MCDERMOTT. Not at all.

Mr. KENT. May I expand on that a little bit?

We are in the process of securing now a new feasibility study from an outside, independent contractor who will come in and provide an update to the feasibility study that was conducted by Rockewll in 1971. The study is being conducted at the request of and in concert with the Department of Justice.

In response to the instructions contained in the audit report that you referred to, in this new study, we will also develop an updated overall concept plan. We will also develop definite timetables for the implementation of subsystems within that overall development plan. The segment of the audit report referred to—which talks about program slippage—is absolutely true.

We agree with it 100 percent, and it sets out various and sundry reasons in there as to what the reasons for those slippages are. We agree with them, and we are endeavoring to do whatever we can to correct the situation. The audit report that you talk about also says that AIDS is a sound program and it will produce benefits, and it will produce savings, and it is a good concept. The earlier Emery study said the same thing about this program. The feasibility study of 1971 said the same thing. GAO is there now studying it, and OTA is coming back to study it.

We have had internal studies on it. The new feasibility study we welcome because we think it is going to support us for some years to come.

Mr. BREEN. Has OTA made some arrangement with you now to do the study that you just mentioned, so that they can finish their study, do you know?

Mr. KENT. The OTA study, I believe, started with the Data Processing Section or the other division, and then they came back and—to my understanding, wrote a report and said they wanted to conduct a further study, which would include—I think they have

access to the documents like this particular audit report, and access to anything we have.

Mr. EDWARDS. I hope you will be alert, and I'm sure you are, to the problems in connection with such a revolutionary invention as is involved in AIDS, and the fact that the public expense technique is being developed. It would be immensely salable to Rockwell, or whoever will finally build the better mousetrap.

Did Rockwell sell these to Canada?

Mr. KENT. The Canadian system was sold by Rockwell and was the system we discussed before in regard to Minneapolis-St. Paul.

Mr. EDWARDS. Who owns the patent on these machines?

Mr. KENT. Calspan Corp. holds the patents.

Mr. EDWARDS. It was developed at FBI expense, though?

Mr. BANNER. The Federal Government has a royalty-free license to use the patents. The reason that the patents were given to the company working on the development was to encourage their won effort, their in-house money to go toward it, and to give them a reason to go into a field that they would not touch otherwise.

Mr. EDWARDS. You feel that Rockwell is doing that?

Mr. BANNER. Yes, sir.

Mr. EDWARDS. Do you know how much profit they have been making on the contract with the FBI? Is it a percentage cost plus contract?

Mr. KENT. Basically, although the most recent contracts that we negotiated were not cost plus—they are fixed fee contracts, some of the old contracts were. As to what the percentages of the profit over and above the cost figures were, they ranged from about 8 to 10 percent.

Mr. BREEN. One of the statements in response also to that audit report was an indication that a lot of money was not spent that was appropriated. Part of that problem was created because money—you do your planning 2 years in advance for how much money you have to spend. I understand that.

But where that money went, it was indicated it was reprogramed to areas underfunded, and the Bureau decided not to go up to Congress and ask for more money from another program. I understand that. But now, during fiscal year 1979, you have to report these programs if they are over a certain amount.

In those early years did you advise Congress in the next year that you had an underfunded program, or would you rely on other moneys to reprogram to the underfunded programs?

And how did you get in an underfunded situation?

Mr. GROOVER. Normally you will have certain cost increases during the year, or even program increases during a year, for which you may submit a supplemental appropriation request for. That basically is the type thing that the excess funding of the automation program went to.

As to whether the Congress was specifically advised in the following year, I believe as to the use of that money to pay for the underfunding in other areas, I do not recall that was specifically done. It is of course done now, and it is done through a reprograming. I think there have been four in the past 2 years submitted to the Congress.

Mr. BREEN. We talked about this—you and I did—the fiscal year 1978, and you indicated that no report was required in those years, in that year, that fiscal year.

Mr. GROOVER. That is true.

Mr. BREEN. But can you trace the money? Is that a relatively simple accounting procedure to do, if you wanted to know in 1978 what reprograming, where that terrorism program money went? Is that a hard thing to do.?

Mr. GROOVER. You could not trace that specifically.

Mr. BREEN. Is that a decision, though—the decision to reprogram has to be in some written form, "We are going to transfer some money in some account to some other account."

Mr. GROOVER. You have two types of situations occurring which may cause a reprograming, and you have mentioned both of them.

One would be the Identification Division automation effort, where we have specific money for equipment in that. That equipment money is available to that division to buy the equipment planned for during the fiscal year.

If during the fiscal year it is determined—and it is often late in the fiscal year—that that money is not going to be required, the advancement in technology is not going to catch up with the money before the end of the fiscal year, that is a conscious decision to reprogram the money. A formal reprograming request would be submitted to Congress.

The other situation that you mentioned is in a terrorism program, which is a field investigative program. You have a different situation entirely. You have a reprograming requirement which we would term as being on an accrual basis. You do not know until after the fact the extent of resources that you are expending on a particular program, because you are expending it in 59 different field offices, and you are not aware of the total activity in those offices until after you have gotten cost figures throughout the entire system.

If that should occur, and the indications are that before the end of the fiscal year you would in fact use more or less in a particular program than was appropriated for it, then you would submit the reprograming request on that basis.

It is on the best estimate, whereas the equipment is fairly specific.

Mr. BREEN. Has the FBI ever turned back money at the end of a fiscal year saying, "We just did not spend it all"?

Mr. GROOVER. We've turned back money. I cannot recall of the specific amounts, but we, like most agencies, would have some funds at the end of the year and at some yearends more than others. And I think one of the years—probably 1976—it was a fairly substantial amount. I think we ended up in the $5 million range.

Mr. BREEN. Thank you.

Mr. KENT. Can I suggest a solution to that problem?

Mr. BREEN. Sure.

Mr. KENT. What we would like to have in the Identification Division would be consideration for "no year funding" for AIDS research and development projects, or "project funding" which gets us out of the annual fiscal bind and is an accepted practice in some research and development projects. We have initiated in my division some efforts to try to go forward and secure this type of funding.

Mr. BREEN. Are there proposals on that, written proposals on that at all, or can they be made available?

Mr. KENT. I think we just started our written process to try and broach the question with the Department of Justice.

Mr. BREEN. If they become available, I am sure the committee would like to have them at some point.

Mr. EDWARDS. Mr. McDermott, and gentlemen, we thank you very much for your excellent testimony this morning, and you certainly came very well prepared and showed good understanding of your work, and we do appreciate that.

We also want to say again, referring to something that Father Drinan said, and that that there is a new era around here, and we are all searching for ways that would—without cutting back essential activities—to examine each of our activities to see if they are really necessary. We have explored some areas this morning that I might take another look at. I am sure we will be interested in it.

Let us face it, the banks have lots of money, and perhaps they should be making a modest contribution. These random prints that come in, perhaps they should just be sent right back. You do not want a lot of random fingerprints in your files, I do not think.

I am glad, Mr. Herndon, that these State laboratories, or State police that send you examinations, that they should be done at home or sent right back to them. That is a good idea. Maybe a modest charge. I do not know of a single police department that cannot afford $6 a day.

Do you?

Mr. JOSEPH. Mr. Chairman, our experience has shown us that since we have operated our new academy, moved into it in 1972, that in excess of 60 percent of local and State officers that attended that academy represent departments under 150 people. And one of our main objectives has been an attempt to offer training and educational opportunities, regardless of geographical location or size of departments.

We do have lot of major departments, but the vast majority of the police population of the United States represent very small departments. And without Federal assistance they would be very hard pressed to be able to send their officers for training that is designed to provide better service to the communities they represent.

Mr. EDWARDS. I am sure that it is true.

Well, we are looking forward to the Director next Tuesday, which will wind up the authorization process for the next fiscal year.

But again, thank you very much.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned.]

[Responses to questions submitted by the subcommittee follow:]

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
OFFICE OF THE DIRECTOR,
Washington, D.C., May 18, 1979.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I have attached a memorandum containing written responses to requests made by Committee members during the appearance of John J. McDermott, Deputy Associate Director, on March 21, 1979.

Please do not hesitate to contact me if you have need of any further assistance or information.

Sincerely yours,

WILLIAM H. WEBSTER,
Director.

Enclosure.

This is in response to requests made by members of the Senate Committee on the Judiciary during the appearance of John J. McDermott, Deputy Associate Director, concerning Fiscal Year 1980 Authorization on March 21, 1979.

[Questions asked of Jay Cochran, Jr., Assistant Director, Technical Services Division:]

Mr. EDWARDS. Have judgments been made by the Federal Government as a result of any of these lawsuits [concerning NCIC]?

ANSWER. One administrative claim was filed for which the Federal Government settled for $200.

Mr. EDWARDS. Do you have the number of missing persons that have been located through entry in the system?

ANSWER. There is no efficient way of determing the number of missing persons located through entry in the system. The only way one can make such a determination is to monitor the file for deletions and thereafter contact the entering agencies to determine if the system could be credited with locating the missing person.

As of April 1, 1979, there were 21,226 missing person records in NCIC. The records are added and deleted at the rate of approximately 400 per day. The deletion of a missing person record from the file indicates that person has been located but does not indicate if the system was responsible for the location. For example, the missing person could return home of his own free will. The NCIC record would be deleted, but NCIC would have had nothing to do with locating the person.

To follow up on 400 deletions a day to determine if NCIC can take credit would be a difficult task.

[Mr. Volkmer requests this information for FBI Laboratory services furnished to State and local law enforcement agencies for 1978:]

Mr. VOLKMER. Since you have available, as I understand it—and correct me if if I am wrong—the information as to man-hours, and you have information is to the States, break it down I would like to know total man-hours, you know, total costs for the States. Go back to '78, 1978.

Mr. HERNI[illegible] I think we could possibly provide that.

In fiscal year 1978, the estimated cost of providing services to State and local law enforcement agencies was $4,871,000. This involved 144 work-years, of which 41 were Special Agents and 103 support personnel.

Question. Subcommittee Chairman Don Edwards inquired as to how many fingerprint cards are received each year from individuals who voluntarily submit them for personal identification purposes.

Answer. Receipts of voluntarily submitted Personal Identification Fingerprint cards have been decreasing in recent years:

Fiscal year:	*Number of cards*
1976	7,998
1977	4,461
1978	1,938

The greatest contributor of these cards is the Boy Scouts of America Fingerprinting Merit Badge Program.

The cost of processing these cares is minimal (41¢ per card) as it involves merely classifying and filing the prints:

Fiscal year:	*Cost*
1976	$3,279.18
1977	1,829.01
1978	794.58

These fingerprint cards are searched only in circumstances where there is a question regarding identity, e.g., in cases of amnesia victims, missing persons, and unknown deceased persons. The body of former CIA employee John Paisley was originally identified on the basis of a Personal Identification Fingerprint Card he submitted to the FBI when he was 17 years of age.

Question. Subcommittee Counsel Thomas P. Breen requested an update on the projected personnel savings to be realized through the automation of the work functions of the FBI's Identification Division.

Answer. The original projection of the ultimate annual personnel savings from automation was "up to" 2,000 employees. This estimate, which was made in 1971,

has proven to be too high for two major reasons. First, it was overly optimistic in regard to the availability of technology to assume certain manual work functions. Second, since 1971, the Identification Division's work-processing burdens have increased considerably as the result of the institution of additional procedures to comply with new legislation, regulations, and court orders relating to the handling and dissemination of arrest records.

Examples of the new burdens are: handling requests of individuals to review and challenge their arrest records; expanded screening of incoming requests to insure that the requesters have statutory authority to recieve arrest records; elimination of nonserious offenses from arrest records; increased purging and expunction activities at the request of state and local authorities; increased disposition reporting; and special handling of arrest records lacking dispositions in the non-Federal employment and licensing areas. These new procedures, which are manual-labor intensive for the most part, must be continued in the new automated system and, consequently, decrease the manpower savings to be realized from automation.

Significant progress has been made to date in the automation project with some resulting labor savings. However, such savings have up to now been, and will for several more years be, offset by the additional personnel requirements involved in the new processing burdens discussed above and in the implementation of automation itself. However, in our most recent projection, which was furnished to the Office of Management and Budget on May 1, 1978, it was indicated that the first substantial labor savings, consisting of 110 positions, would be realized in fiscal year 1982. It was also conservatively estimated that, based upon a constant fiscal year 1975 workload, the annual savings would reach 625 employees by by fiscal year 1986. However, it was further estimated that, if the workload grew at a five percent annual rate (which it has approximated for the last several years), then the annual manpower savings would reach 1,069 employees by fiscal year 1986. These estimates were made prior to the pending reduction of 200 positions in the Identification Division's authorized manpower for fiscal year 1980. The reduction will to some as yet undetermined extent delay the savings to be achieved through automation.

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FBI OVERSIGHT

TUESDAY, MARCH 27, 1979

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND
CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:35 a.m. in room 2226, Rayburn House Office Building, the Honorable Don Edwards, (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Drinan, Hyde, and Sensenbrenner.

Staff present: Catherine LeRoy and Janice Cooper, assistant counsel; and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

This morning marks the subcommittee's fourth hearing on FBI oversight and authorization for fiscal year 1980. This is only the second year that the House Judiciary Committee has had authorization responsibility for the Department of Justice and its component organizations, including the FBI. It is a process with which neither the Department nor the committee is completely comfortable yet, but which has been beneficial for all of us.

Of course, this subcommittee has had a close working relationship with the FBI for several years. The authorization process helps to institutionalize that relationship. It also forces us to focus not only on issues and problems which are glamorous or topical, but to look at all aspects of the FBI's activities, no matter how routine, in our attempt to determine if Federal dollars are being spent in a manner consistent with administration policy and congressional intent.

One of the benefits of this closer scrutiny is that Congress and the Bureau have been forced to make more reasoned decisions as to how FBI resources should be allocated. This is not just because Federal dollars are being watched more carefully. It is also because we both have reached the conclusion that the Federal presence in law enforcement is vital in some areas but not in others.

I commend the FBI for recognizing that priority areas—especially organized and white-collar crime in these United States—merit the most attention, and, of course counterintelligence. The ongoing Longshoreman's Union investigation is a case in point, that being a splendid case. I'm sure that the Bureau is very proud of the work that's being done there. This is exactly the kind of case that I know you're concentrating on, and I'm sure you should be commended on your concentration there. The Bureau is uniquely equipped to investigate sophisticated national criminal enterprises. In doing so, it performs a vital law enforcement function State and local agencies just can't do, no matter what their resources or capabilities.

I hope we will see more and more investigations like this and fewer of the traditional cops and robbers cases which ultimately can and should be handled by local police.

Our witness today is the Honorable William H. Webster, Director of the Federal Bureau of Investigation.

Before I welcome you, Mr. Webster, may I ask the gentleman from Massachusetts.

Mr. DRINAN. Thank you very much.

And I, too, welcome Judge Webster back. We had association with Judge Webster at Williamsburg in a very fine seminar for the weekend. I heard your testimony and commend you for it, and I look forward to your testifying.

Mr. EDWARDS. I understand, Judge Webster, that you are going to give us a summary of your lengthy testimony. In that case, without objection, the entire testimony will be made part of the record.

Will you please introduce your colleagues, and you may proceed.

TESTIMONY OF THE HONORABLE WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION; ACCOMPANIED BY JAMES B. ADAMS, ASSOCIATE DIRECTOR; JOHN J. McDERMOTT, DEPUTY ASSOCIATE DIRECTOR; AND L. CLYDE GROOVER, INSPECTOR-DEPUTY ASSISTANT DIRECTOR, ADMINISTRATIVE SERVICES DIVISION

Mr. WEBSTER. Thank you, Mr. Chairman.

On my right is Mr. Clyde Groover from the Administrative Services Division. On my left is Associate Director James Adams and Deputy Associate Director John McDermott.

As the chairman pointed out, I have filed a full statement, and, with your permission, I'll let that stand for the record and summarize the points in a very few minutes.

The matters I addressed concerned primarily FBI accountability, internal and external. Externally, there are the proposed FBI charter, Freedom of Information and Privacy Acts, General Accounting Office access to FBI records, and the proposed revisions of the Federal Tort Claims Act.

Internally, we have established priorities to concentrate our investigative resources in those areas which will result in the greatest public benefit, organized crime, white-collar crime, and foreign counterintelligence.

Assistant Director Colwell outlined our inspection procedures for the committee previously. Additionally, a constant check on field office operations to insure compliance with headquarters priorities is maintained through the Resource Management Information System, which you may hear me refer to as RMIS. The system is designed to furnish necessary statistical data to measure the effectiveness of our operations for both headquarters and the special agent in charge of each of the 59 FBI field offices. The system permits evaluation of our workload, its volume and complexity concerning the allocation of resources, identification of significant cases, and results of investigative activities.

We also recognize the need for external means holding us accountable. I look forward to a legislative charter for the FBI in the coming year. Actually two charters are currently proposed, one being for intelligence activities.

Charter legislation can fill a void which has existed in the past when our powers and duties have not always been clearly defined. I am hopeful that the charter will resolve fundamental questions as to the balance between individual rights and law enforcement duties.

We hope that charter legislation will furnish clear authority and limitations without diluting our abilities to fully carry on our functions; in short, that statutory provision for departmental guidelines to flesh out the statutory framework, may allow sufficient flexibility to deal with significant shifts in conditions in the nonstatic struggle against increasingly sophisticated criminal enterprises.

In the area of freedom of information, we are concerned for the confidentiality of informants, and the apparent efforts to identify them through the Freedom of Information Act—FOIA—illustrated in part by the escalation of percentage of requests received from prisoners recently measured at 16 percent.

I might note that private citizens and public offiicals have also indicated uneasiness at the prospect that they might be disclosed as sources of information even in noncriminal matters.

The area of confidential informants is one where we have not yet been able to reach a mutually satisfactory resolution with the General Accounting Office. We expect to continue discussions with GAO in the future in order to develop such a resolution. In the meantime, I have ordered a review of all our current informant files by our Planning and Inspection Division.

I support revision of the Federal Tort Claims Act, substituting the Government as the exclusive defendant in civil suits filed against Government employees, when they have acted within the scope of their employment. In effect, it would benefit the plaintiff, public employees, and the Government.

I emphasize that the proposed provisions do not remove the possibility of criminal or disciplinary action against an employee if the facts warrant. In short, I fully support accountability, both internal and external. Only through accountability can we maintain the confidence of the public by fulfilling our obligations as the Constitution demands.

That, Mr. Chairman, summarizes the full statement, and I'd be happy to answer whatever questions the committee may have.

[The prepared statement of Hon. William H. Webster follows:]

STATEMENT OF DIRECTOR WILLIAM H. WEBSTER,
FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman: I believe I can best serve your purposes today by first making a brief, general statement concerning executive direction of the FBI, the internal tools we use to keep on course operationally and legally, and how we evaluate and control our programs.

Then I want to discuss briefly some current matters that are of mutual interest to the FBI and to this Subcommittee. In general, each can be identified as an external means of holding the FBI accountable for its actions—past, present and future. Specifically, they are the proposed FBI Charter; the Freedom of Information and Privacy Acts and General Accounting Office Access to FBI Records.

Finally, I want to comment on proposed revisions to the Federal Tort Claims Act.

INTERNAL ACCOUNTABILITY

The Bureau, operating as part of the Department of Justice, is charged with the enforcement of over 200 categories of violations. Our operations are conducted in accordance with statutory limitations, judicial decisions, and guidelines set forth by Attorney General Levi in 1976.

Our programs are cooperative, preventive and investigative. They are cooperative in the training and assistance we furnish other Federal, state and local agenices, much of which has been covered in previous testimony before this Committee. They are preventive insofar as the FBI and law enforcement can discourage, deter or forestall the commission of violations, while acting within our authority. They are investigative principally in the solution of crimes already committed.

We have established priorities for our investigations so that our resources may be concentrated on certain areas which will have the greatest impact for the public benefit. Lesser priority programs are given decreased emphasis to allow this concentration of resources.

The FBI's top three priorities are white-collar crime, organized crime and foreign counterintelligence. The lesser priority areas of field investigation would include such things as personal crimes, fugitives, and civil matters.

In addition to the inspection procedures outlined on March 15 by Assistant Director Colwell, we have a constant check on the operations of the field offices to insure that the priority programs as designated by the Bureau are being observed.

To support this management philosophy we have a Resource Management Information System (RMIS), designed to furnish the necessary statistical data which is used to measure the effectiveness of FBI operations.

The basic tools in this information system are the Monthly Administrative Report (MAR), Time Utilization Record Keeping (TURK), the Priority Case Indicator (PCI), and expanded categories of case results or accomplishments.

Very briefly, MAR identifies the number and nature of investigative matters, isolating marginal and quality cases; it allows a more accurate assessment of the workload in a field division and allows both the Special Agent in Charge (SAC) of a division and FBI Headquarters to more effectively utilize Agent manpower. It allows the determination of the relative complexity of work in different field offices by classification and program category.

The TURK System collects data on the expenditure of Agent time by the same subclassifications as itemized in the MAR and accomplishment reports. It indicates not only the number and nature of the investigative matters, but also the allocation of manpower and financial resources to each area. TURK enables the SAC and FBI Headquarters to readily determine if priorities are being addressed or ignored.

The accomplishment report complements the MAR and TURK furnishing specific details concerning the results of investigative activity that are the primary measures of the effectiveness of our investigations.

The Priority Case Indicator will extract case information from the Monthly Administrative Report and isolate significant cases by individual classification, demonstrating the major work efforts and the significant Federal criminal and counterintelligence activities in the United States by field office.

FBI CHARTER

I am very hopeful that in the coming year Congress will provide the FBI with a charter—actually, as currently proposed, two charters, one concerning its foreign counterintelligence activities and the other its domestic criminal work, support functions, and other selected areas of responsibility.

In the past, we have not had a law which clearly described our functions, powers, and duties. We have relied instead on vague empowering statutes, assumed constitutional authority, executive orders, arrangements of custom as well as some specific law to justify our work. As a result, in some areas it has been unclear that we have the power to engage in the kinds of activities we have engaged in.

Charter legislation can fill this void. It will let us know what the American people and their representatives expect of us.

It will permit our Special Agents to act decisively, without doubt that what they do might be unauthorized or illegal.

It will eliminate the possibility of making policy decisions involving fundamental questions as to the balance between individual rights and law enforcement without the guidance of those in Government obligated to oversee and approve our operations.

In short, it will help insure that the Bureau accomplishes its mission effectively, as the law requires.

There are a great many areas which a statement of powers and functions might profitably address—some more important than others, some which, in the drafting, will generate more controversy and be subject to more disagreement, and some which have already been the subject of discussion in other proposed legislation.

Nevertheless, to write a truly comprehensive law covering, for example, criminal, civil, and background investigations, the question of reporting on civil disorders and demonstrations, the issue of general information exchange, and other important areas—in other words, all but our intelligence functions—will very likely be a time-consuming project which, without the cooperation and goodwill of all parties involved, cannot have much hope of success.

On our part, we are pledged to provide this committee with any assitsance that it may request in any aspect of its work concerning a charter.

We, of course, have our own views as to what charter legislation should encompass.

It should establish legal authority legitimating each designated area of our investigative work. It should clearly give us the power to engage in other essential or incidental functions which Congress wishes to authorize.

It should not, however, be so detailed that it undercuts our ability to effectively carry out the Bureau's mission of combating crime and violence.

We accept the idea that one function of the charter will be to prohibit conduct which threatens the constitutional rights of citizens. But we are persuaded that this can be achieved without explicitly detailing when and how an investigation is to be conducted.

Department of Justice guidelines in support of basic legislation can insure that investigations are conducted within the law. In fact, I believe they have very effectively accomplished this in the past three years.

They also have the unique advantage of flexibility. If conditions drastically change and it is necessary to alter them, they can be rewritten probably much more expeditiously than could a statute.

A particularized charter drafted to replace guidelines might reduce the chances of illegal conduct, but I believe that it would at best add marginal protection to that which would be provided by a combination of statute and guidelines coupled with Congressional oversight. It could also seriously reduce our investigative effectiveness by inviting litigation in the initial stages of investigations and by reducing the Bureau's use of discretion in the varied cases it investigates.

These are some of my ideas and concerns with respect to a charter for the FBI. In the coming months, we would be happy to work with you in any way we can to produce the best possible product.

FREEDOM OF INFORMATION

In the five years that have elapsed since the Freedom of Information Act was amended, the FBI, the Congress, and others have observed the benefits of and difficulties with the 1974 amendments.

Last month, I had the opportunity to present to the Subcommittee on Government Operation and Individual Rights of the Committee On Government Operations, House of Representatives, our experiences and problems encountered with FOIPA. I will not recount them today. However, I want to identify and repeat our principal concern in working with FOIA. It is the need to protect the identity of confidential informants.

Authority to protect that identity is specifically provided for in the Act. However, an inherent problem with this exemption is the parallel requirements that segregable, nonidentifying portions of records be disclosed. In practice, this means that an FBI employee even though he has learned to evaluate more carefully what information is reasonably segregable, does not know, cannot know and has no way of learning the extent of a requester's foreknowledge of dates, places and events. Yet somehow he is expected to predict it. The consequences of erring in favor of disclosure rather than withholding information are severe.

Approximately 16 percent of FOIA requests are coming from prison inmates. This figure is an escalating one. An analysis conducted fifteen months ago showed that only 6 percent of the requests were from prisoners. Our experience tells us that in many instances their requests are being made for the purpose of identifying the informants who "probably" were responsible for their incarceration. It can be assumed that many of those prisoners will not require proof beyond a reasonable doubt in identifying a person as an informant.

To our knowledge no informant has suffered physical harm as a result of an FOIA disclosure. But absence of a victim does not lessen our concern. We know that requesters are working together, pooling FOIA information, to identify sources. For example, we know that an organized crime group made a concerted effort to identify sources through the Freedom of Information Act.

Our sources of information are not convinced by the absence of identified victims that we are still guarantors of their confidential relationship with us. We can provide examples from a cross section of our society showing refusals to furnish information because of their perceived fear of disclosure under FOIA. These are not merely uncooperative professional confidential informants. We are speaking here also of private citizens, businessmen, and officials of municipal, state, Federal and even foreign governments.

I want to emphasize that the FBI is not asking for repeal of the FOIA. The objective of public disclosure aimed toward the goal of an informed citizenry is one to which the FBI is committed. In calendar year 1978, the FBI made final responses to 19,982 Freedom of Information and Privacy Act requests, releasing two and a quarter million pages to requesters. The FBI's demonstrated response to the mandate of Congress in this area is one with which I am justifiably pleased.

GAO ACCESS TO FBI RECORDS

Although Legislative oversight was, for many years, a little exercised right, a number of Committees, including this one, now closely inquire into various phases of our activities and our projected activities, what we do and how we do it.

The General Accounting Office, an agency responsible to the Congress, has audited the operations of the FBI and submitted reports to Congress as an aid to Committees in the exercise of oversight authority and responsibility.

There is a staff of GAO auditors assigned to the FBIHQ site, and located in Room 7658 of the Hoover Building. The full-time staff members all have "Top Secret" security clearances.

The ground rules of GAO auditors' access to FBI records were established in an agreement reached in May, 1976, between the Comptroller General of the United States and the Director of the FBI. The field offices of the FBI have been advised of this agreement, as set out in a letter from the Comptroller General to the Director, FBI, dated May 21, 1976.

When GAO is prepared to initiate a survey, we are advised. An approximate time frame for the survey is usually given. Some projects have taken two to three years.

After approval, a meeting of GAO and FBI personnel takes place to discuss the survey and resolve any problems. The field offices are notified, if pertinent, and the survey is conducted.

Upon completion of the survey, GAO prepares a "draft" copy of the report of results. We are then given an opportunity to make changes and corrections on obvious incorrect statements of fact. Of course, changes on GAO observations, opinions and conclusions are not solicited by GAO.

Once the report is complete, it is put in its final bound form and made ready for release to the public. Usually, the Department of Justice will request a statement of general observations on the report from us. This statement may be forwarded to the Congressional Committee which requested the survey be conducted by GAO.

It may be noted that there is a provision in the GAO-FBI agreement that if the respective staffs cannot promptly resolve all differences the matter will be referred to the Comptroller General and the FBI Director for resolution.

In one area, our confidential informants, we have not yet been able to reach a mutually satisfactory resolution with GAO. We expect to continue discussions with GAO in the future in order to develop such a resolution. In the meantime, I have ordered a review of all of our current informant files by our Planning and Inspection Division.

AMENDMENTS TO THE FEDERAL TORT CLAIMS ACT

Now, I want to speak briefly about proposed revisions to the Federal Tort Claims Act. Currently, there are three versions of this legislation, two of which were very recently drafted by Congress. The Department of Justice presented its proposal, which I have strongly supported, some time ago.

As introduced, the Department's version would substitute the Government as the exclusive defendant in civil suits filed against Government employees if the employees named have acted within the scope of their employment.

The vast majority of our Special Agents perform their rightfully assigned duties in good faith as the law requires. Yet even law abiding Agents can be victimized by harassing actions or be incidentally named in legitimate but broadly drafted complaints. The result can be rigorous, protracted discovery and litigation, invariably coupled with the threat of financial ruin. With the Government substituted as the exclusive defendant, the individual employee would be protected from this.

In my view, both morale and effectiveness would be directly improved.

The Department's proposal would not, however, protect the guilty. Those relieved of civil liability would still face criminal prosecution in appropriate cases—as well as internal disciplinary action. In addition, the proposed revision provides that a plaintiff who receives a monetary recovery from the United States because of a constitutional or most common law torts can require an administrative inquiry into the alleged incident. Further, he may appeal the results of the inquiry—first, to the Merit System Protection Board, which replaces the Civil Service Commission, and, ultimately, to the courts.

The plaintiff, on the other hand, profits by these amendments because recovery is simpler and easier. In the past, if he failed to show that the defendant acted in bad faith, recovery was impossible. In fact, out of hundreds of Bivens-type suits, in only very few cases were plaintiffs able to show bad faith on the part of Federal employees. Moreover, none of those judged liable were Special Agents. With the revision, the United States waives the good faith defense. Thus, the greatest roadblock to recovery is removed.

The plaintiff is also favored in another way. Liquidated damages of at least $1,000 are guaranteed if he can prove a tort was committed. This eliminates some of the difficulty involved in establishing monetary damages.

In many cases, of course, where it is apparent that there has been injury, the Government as the exclusive and solvent defendant will be encouraged to settle. Litigation will often be seen as the more expensive and less desirable alternative. In the past, this was not so. The Government recognized that individually used employees were unwilling and financially unable to meet the costs of settlement. And, owing to the possibility of punitive damages, the Government, even as co-defendant, had no choice but to litigate. Regardless of the merits, every threshold defense was asserted and every trial strategy was pursued. In short, under the current system, a great deal of money is spent in litigation with few recoveries.

The new revision will lift real and potential burdens from the shoulders of our employees without lessening accountability. It will reduce litigation costs and facilitate plaintiff recoveries. It's a balanced proposal. I support it, and I believe it deserves the support of the Congress.

CONCLUSION

I have tried to give you an overview of some of the current internal and external means holding the FBI accountable for its actions. They are not exclusive ones. Our accountability to the public through Congressional oversight and public media are obvious. I support each of these because only through a rational system from within and without the Bureau can we maintain the confidence of our citizens. Only in this way can you be sure, as I am, that today's FBI is doing the work that you and the American people expect of us in the way that the Constitution demands.

In addition, I have attempted today to identify areas where some modification to the existing means of accountability may be needed.

Now I would be happy to answer whatever questions you may have.

Mr. EDWARDS. Thank you very much, Judge Webster.

I received this morning a letter to Chairman Rodino, dated March 26, from you, Judge Webster, in response to my request regarding a list of programs the FBI Office of Training and Evaluation expects to evaluate during fiscal 1980, and realistically expects to be completed by March 1980.

Without objection, your letter will be made a part of the record this morning.

MARCH 26, 1979.

Hon. PETER W. RODINO, Jr.
Chairman, Committee on the Judiciary
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter responds to the request by Chairman Don Edwards of the Subcommittee on Civil and Constitutional Rights during the testimony of Assistant Director Les Colwell of the Planning and Inspection Division on March 15, 1979.

Congressman Edwards requested a list of programs the FBI Office of Planning and Evaluation expects to evaluate during Fiscal Year 1980 and which realistically expects to be completed by March, 1980, when the Fiscal Year 1981 authorization hearings will commence. During Fiscal Year 1980, the Office of Planning and Evaluation plans to initiate the evaluation of the three priority I Investigative Programs within the FBI—Organized Crime, White Collar Crime and Foreign Counterintelligence. These are the major investigative programs of the FBI and it is expected that each will require at least six months to evaluate and will necessitate a heavy commitment of manpower; thus, it is not projected that any of these three major program evaluations will be completed by March, 1980.

Other program evaluations presently underway or which will be initiated between now and March, 1980, include the following: Antitrust and Civil Matters; Reimbursable Applicant Investigations; Non-Reimbursable Applicant Investigations; Other Investigations (Crime Resistance and Personnel Matters); General Government Crimes; Personal Crimes; General Property Crimes; and Civil Rights. It is presently projected that some or all of these evaluations will have been completed prior to commencement of the Fiscal Year 1981 authorization hearings.

It is important to note that the above are projections only. The Office of Planning and Evaluation has developed a five year audit plan which will encompass the evaluation of each of the FBI's investigative and administrative programs; however, unforeseen exigencies may well require realignment of the schedule of evaluations to accommodate immediate needs. For instance, the office of Management and Budget recently requested a study involving assistance furnished other Federal, state and local agencies. This request may require a reordering of the audit schedule.

The above best estimates are furnished in accordance with Congressman Edwards' request. If either he or you have additional questions regarding evaluations being conducted of FBI programs, Mr. Colwell or I will be pleased to arrange a briefing to provide additional data you may desire.

Sincerely yours,

WILLIAM H. WEBSTER,
Director.

Mr. EDWARDS. The gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman.

And thank you, Judge Webster.

I know, Judge Webster, that you are as wary as we are of the whole question of informants. I commend the chairman for his perseverance on this topic over some 4 to 6 years. But I wonder if you would elaborate, Judge Webster, on some of the things that you said before the Senate Judiciary the other day, that you indicated that you were going to have an internal study on this whole question.

Would you supply us with some details or some things in which this subcommittee could be of help to you?

Mr. WEBSTER. Yes, I would be happy to do that, Congressman Drinan. I have sent out instructions to the field that we will shortly

be commencing a full-scale review of our informant files, all of those which were active, I believe, as of February 28, in order to insure that there be no modification in the files.

As a result of my instructions, Mr. Colwell, the Chief of our Planning and Inspection Division, has conferred with Mr. Ols of the General Accounting Office with respect to the profile of our inspection. I directed that every file, not just random auditing, but every file, be reviewed. There are some 2,800 of them. We have already started that review in the Washington Field Office as an immediate prototype to iron out any bugs that might develop in that audit.

I have given this a top priority status. Everything else in our planning and inspection program, with one exception, has been put behind this one. I would hope that we would complete the audit within approximately 30 days, by May 1.

In connection with that audit, I have directed that the areas of compliance to be reviewed include, but not limited to, the following: Development of informants, operation of informants, travel by informants, reporting information obtained from informants, informant files and indexes, payments to informants, use of informants, instructions to informants, and violations of instructions or laws.

Now, it's my understanding that when we reviewed these items with Mr. Ols of the General Accounting Office, he indicated that we were going beyond, significantly beyond, anything that they would have felt obligated to do if they were conducting an audit of this kind.

It's my intention to try to find out everything there is for me to know about this program. As you know, I've been very much concerned about the confidentiality of our informant files, and the general public's perception of whether our files are, indeed, confidential files, and that I have been most interested in trying to develop a response to a legitimate oversight responsibility of the Congress which will both discharge congressional responsibility and, in my view preserve the integrity of the files which contain information as to which we have promised confidentiality in order to obtain that information.

I don't believe that I can properly respond to all your questions which you legitimately ask in the absence of a clear and unqualified audit without that type of knowledge, and so that is what I'm seeking to do. I want to know exactly where we stand.

I have no reason not to have confidence in full compliance. I've been aware of only one or two criticisms directed against the use of informants by the FBI, and those involved situations which predated my arrival and predated the implementation of the Attorney General guidelines; but I believe I have that obligation.

I'm hoping that when we finish this audit, there will be a further basis to explore with the General Accounting Office a protocol under which it can discharge its responsibilities in a way that is satisfactory to this committee, and I can discharge what I conceive to be my responsibility to protect confidentiality.

I've been in touch with Mr. Staats, and he's been most cooperative. I must say informally, because we have nothing specific in this area at the present time, but I have personally had discussions with Prof. James Wilson of Harvard and Inspector Hotis, who reports directly to me and has been responsible for the drafting of our contributions to

the proposed charter. He has gone to Boston to visit with Professor Wilson. I'm hoping that out of these conversations can come another form of study which will perhaps help us in making full and effective use of informants on a broader management basis, with the advice of Professor Wilson.

And, so, that is a side approach. I had reported that we were working on that earlier, trying to find some way.

We started off in discussions with Assistant Attorney General Heymann, trying to see what kind of a program we could develop. I asked the Criminal Investigative Division to come up with some plans. We reviewed them again; we made them more extensive. We've been back and forth.

That particular program has not gotten off-the-ground. We have had such a shrinkage in the number of our informants; not just the planned shrinkage which occurred 2 or 3 years ago to get down to a genuine informant role, but since I've been on board, we've lost over 200 informants, in number, despite a concerted effort on our part to develop an informant program. This being the case, there's great sensitivity out there that we somehow are attacking the informant program; and it's quite the reverse of that. We're trying to develop an informant program.

So, I have to be sensitive to perceptions, not only within our own organization, but also perceptions by people on the street who supply information, and by such knowledgeable people as Federal judges who, themselves, have expressed considerable concern about our ability to preserve confidentiality, and their anxiety that these files not be made available to outside agencies.

So, that, in a rather lengthy explanation, for which I apologize, is where we are at this point. I think that the study that we have initiated is sufficiently inclusive to be fully informative. I want to be sure we didn't have to go back and do it two or three times again. It seems to satisfy the GAO's perceptions of what we ought to be finding out about ourselves. And when we have gathered this information together, I'll be prepared to respond to the Congress as to the contents of the study.

Mr. DRINAN. I thank you for the explanation, Judge; and it has an added significance to me, because I, apparently, have new responsibilities with regard to the Drug Enforcement Administration. And in the Subcommittee on Criminal Justice, which I now chair, we will be going into this whole question with the DEA. So, if you can develop some standards that make sense to the Congress and seem rational, I'm inclined to think that the DEA might follow your example; I would hope, anyway.

But I don't want to go back, asking the same question, but you know the difficulty that the subcommittee has had with the lack of access of the GAO, and how, under the scheme that you are now developing, how can that difficulty be overcome?

Mr. WEBSTER. The best that I can promise you at the present time is that we are all working on it. I think I want to be able to respond more fully after I see this study, see how we can approach it. We have not been able to resolve it, but we are sincerely trying.

As I'm sure you know, we've had 8 or 10 GAO studies of various aspects of our work. As a matter of fact, we maintain an office for GAO, in the same area as our Planning and Inspection Division. And I really

support that. We just have run into a tough one to resolve here, and if we can find the basis for satisfying you that the approach we develop with GAO is going to be sufficiently satisfactory, then that is what I'm shooting for.

That is as much as I can tell you at the present time.

Mr. DRINAN. My time is expired, Judge. I thank you very much.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

Judge, do you think the prohibition on the development of informants in the preliminary phase of a domestic security investigation hobbles that investigation? Does this mean that the FBI is unlikely to learn of a groups intentions until a crime has already been committed?

Mr. WEBSTER. Well, I would be less than candid if I didn't say that the absence of the ability to put an informant into a particular organization wouldn't increase the risk that overt activity would take place before we knew that it was in the works. However, that doesn't lead me to suggest a change in that guideline. We do receive information from inside organizations, and we are entitled to do that as a basis for developing the information.

If we used the barest information as a basis for placing informants in domestic organizations, it wouldn't be long before we would be developing the kind of informant activity that was so severely criticized in the past. It is hard to distinguish between organizations that I like, organizations that you like, and, conversely, when we start putting informants in, because we hear rumbles, there may be some problems.

Mr. HYDE. There is a serious controversy in the Federal courts right now about whether or not a magazine can publish an article about how to make a hydrogen bomb. I remember Rap Brown saying, "Wait until we get the bomb, baby."

Now, it would not be science fiction to assume that radical groups of the right or the left want to shake up the establishment terminally. This could happen. I think we have led a charmed life in this country. When Aldo Moro, former Italian prime minister, with five bodyguards gets kidnapped.

Now, it just seems to me nonsense not to be able to use informants. The people's right to know should not extend to the FBI. To me that is self-defeating and nonsense.

You testified you have lost over 200 informants since you have been on board. Why is that?

Mr. WEBSTER. I have to go primarily on what the explanations are that we see in our files, in the reports that are given to us.

Mr. HYDE. What do you think, Judge Webster?

Mr. WEBSTER. I think the main reason that we are losing informants, there are two main reasons, and they both come up to the same—confidentiality. Our agents responsible for developing informants are not as certain as they should be that they can, in fact, promise confidentiality. When they have to make that promise they're not as confident as they used to be. And, secondly, the people in the street who supply the information do not believe that we can, in fact, preserve that confidentiality. They see too many people asking questions about our files, wanting to see our files. The Freedom of Information Act is the primary source of lack of confidence. I'm for freedom of information; it's the application of the Freedom of Information Act to our

particular situation that has caused many of the people to say, "I'd rather not give you the information because I just don't think you can keep it."

Mr. HYDE. Are you able to guarantee confidentiality now as the Bureau could before the Freedom of Information Act?

Mr. WEBSTER. No, clearly not.

Mr. HYDE. So, the reality is that you are restricted in your ability to guarantee confidentiality.

Mr. WEBSTER. That's right.

Mr. HYDE. Do you have any legislative changes that you would suggest in Freedom of Information Act?

Mr. WEBSTER. Well, I, on my own, have made one or two suggestions. The Department of Justice is in the midst of a task force which I hope will finish up its work shortly—we have a representative on that task force that will make departmental recommendations. My own personal recommendations have been to ask for consideration of a moratorium for a period of years on closed criminal investigative files, so as to put some age on those files and give the informants assurance that their indentity will be protected until a time when it won't matter if their name comes up.

I recognize that that kind of approach would require exceptions. The Attorney General will have to be in a position to waive it in cases of important national interest. But it is an approach.

Another approach that I have suggested for consideration is that we be given broader authority to excise material or withhold material which was produced by an informant. At the present time, we have to go through the process of deleting words or lines if we can clearly show that it is attributable to an informant source and might identify the source.

We've run our own war games. We know that it's too easy to figure out, after all that's been done, that a particular person supplied the information, or that a particular person was an informant. I'd like to see that tightened up if we can, to have a broad autoority to withhold in those areas to protect the people who supply the information.

This is particularly true in the case of Federal judges who are being asked now to comment on 152 colleagues who are being nominated for the bench. More and more I get reports from them saying they're just not going to supply the information because they don't believe and can't be assured, that their colleague, when he takes the bench and asks for his background investigation available through the Privacy Act, isn't going to be able to see derogatory information. It's very important to the system that the judges who know the lawyers who practice before them be in a position to comment candidly about judicial temperament and other things. This is a good, clear illustration of the kind of problem we have.

So, if you take somebody whose life is involved, say someone inside a domestic orgainzation that we're investigating for terrorism, you can appreciate how anxious he is about this sort of thing.

We got a recent boost, I think, with the Second Circuit Court of Appeals opinion in the *Socialist Workers Party* case. That case had been kind of a symbol out in the street in that the sources didn't really know what the issues were, but they knew there was some court where some judge was going to turn over their names. I hope that we

will get some guidelines out of the court opinion. So that, we may learn a little more about how to manage confidentiality. There are indications that this case may go to the U.S. Supreme Court.

Mr. HYDE. Judge, my time may be up, I don't know; but I would like to ask this. Would it violate the chain of command if this committee were to see your recommendations before they get filtered through Justice? You know, Justice has a different problem than you have. I do not mean to deprecate their point of view at all, but these guidelines were issued by the Justice Department. You say you wouldn't change the limitation on the development of informants. My lord, I think you would take an informant where you find it, and some who might develop fortuitously.

Mr. WEBSTER. Well, I think we are entitled to receive that type of information if someone wants to volunteer it to us. What that precludes us from doing is taking an individual and saying, "Go in there and find out what they're doing," until we have a basis for believing that they are planning acts of force and violence. Otherwise, we'd be putting people into everybody's church orgainzation.

Mr. HYDE. I don't think you'd do that, would you?

Mr. WEBSTER. I would not do it.

Mr. HYDE. There are those who think you would do it.

Mr. WEBSTER. Yes.

Mr. HYDE. Right. We must defer to them.

Is it possible for you to send me your recommendations, or would that put you——

Mr. WEBSTER. I'm sure the Attorney General would have no objection to that. I'll check into that, and if there is no problem, I'd be glad to do it. That is my personal view.

Mr. HYDE. I understand. Thank you.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Judge Webster, in my hometown of Milwaukee we had a terrorist bombing incident that took place during 1979.

I notice that there has been a rash decline in the number of terrorist bombing incidents. To what do you attribute that, luck, good investigative work, or what?

Mr. WEBSTER. I think perhaps a combination of both. We have been reasonably successful in prosecutions. That has been worth something. In instances where we are able to identify and upset a bomb factory, for instance, that cuts down on the number of bombs coming out of that particular source.

Most of the law enforcement people around the country credit it to vigorous, effective efforts against terrorism. It is hard to claim all that credit.

The number of political bombings, or terrorist bombings, dropped almost in half last year, and it is hard to say, "Look what we have done." But I think we know we have increased our efforts within our guidelines. Those that we've been successful in handling have reduced the number of people still available to commit other acts of terrorism.

We have created a large number of fugitives, because, in our pursuit of them, they are scattering and running, and while they are on the run, they can't do very much. And I think that this has helped.

Mr. SENSENBRENNER. Usually, when there is an incident, the local police force is the first to respond.

How well prepared do you think most large metropolitan police forces are to respond to a terrorist incident?

Mr. WEBSTER. I think most large metropolitan police forces are very well equipped to respond. We have certain skills that, I think, exceed the capabilities of most large cities, and they are very willing to have the FBI come in behind them and to give the added support.

A good example of that was the Croatian seizure of the West German consulate in Chicago last summer. The Chicago police got there; they stayed there. We came in; we provided the hostage negotiators, telephone contacts with West Germany, and so on. We worked together on it; we worked very effectively. That is a good example, I think.

There are other communities where there is no capability at all, where there is no skill at dealing with terrorists who hold hostages.

Looking back on our track record last year, I can't believe how good it really was. Every skyjacking successfully resolved, every act of terrorism involving hostages successfully resolved without the loss of a single life. I think that is very impressive. I'm proud of it, and I think that may be one example in answering your first question.

Mr. SENSENBRENNER. On another issue, the Freedom of Information Act has been discussed in previous testimony as well as in a couple of the previous questions, and I understand that many problems are created by a third-party request under the Freedom of Information Act.

I am wondering what percentage of requests under the Act are third-party requests, and whether everybody whose name would be divulged under a third-party Freedom of Information Act request is notified before the information is released.

Mr. WEBSTER. I don't think I have those figures, Congressman. If I may, I'll try to answer that for the record.

Mr. SENSENBRENNER. Certainly, can you answer whether the people whose names are divulged to a different party are notified before divulging theirs?

Mr. WEBSTER. No; they are not notified. If a person's name is released to a requester, it is because it cannot be withheld under the privacy exemptions of the act.

Mr. SENSENBRENNER. Are different guidelines employed for different requesters or different subjects under the Freedom of Information Act?

Mr. WEBSTER. Well, I think the only guidelines that we follow are the exemptions. We do have one switching pattern that we recently put into effect in order to help with our backlog which we have developed, and which I have reported to the appropriate committees of Congress. We are falling behind in handling these FOIA requests with the number of people that we have lost in the reductions in force.

In order to try to increase the speed in which we will respond to individual requests, we are trying to identify requests by individuals just seeking information about themselves. We are also trying to identify the big projects and move them onto another track, because it's going to take longer, and take more people to review thousands and thousands of pages, and in that way we keep the flow of the John Q. Citizen inquiries flowing and don't have them backed up behind one of these major projects, and I think that is the only difference in treatment that I am aware of.

Pardon me, there are some, when there is an emergency of some kind, such as where it is necessary for one's legal defense. I participated in breaking the line of progression for Mrs. Luizzo's file, which her children wanted, in order to make 1,500 pages available to them, which were ready for distribution, but were being held up along with 1,500 others because of the prosecution of Gary Thomas Rowe down South. So, we identified 1,500 pages that had nothing to do with that prosecution, and made them immediately available to the family.

That type of thing will come up from time to time.

Mr. SENSENBRENNER. And I have one final question on another subject.

There have been some critics of the Bureau who said that the Bureau was not doing enough to weed out those special agents who may violate the law, and to discipline them or terminate them from the Bureau.

Will you please give me an overview on what kind of internal review procedures you have, so that this criticism doesn't take place, or at least is minimized as far as possible?

Mr. WEBSTER. I'd be happy to do that.

But first, in response to whatever critics there may be of that, I'm not sure what their time frame is. Since 1976 there has not been one single successfully made claim of a constitutional tort committed by a special agent of the FBI since the Attorney General guidelines were implemented. So, the track record there is very good.

We don't settle for that, however. The Office of Planning and Inspection Division maintains an Office of Professional Responsibility. Every single allegation, however frivolous, made against an employee of the Bureau, is throughly investigated, a report reduced to writing, and the action taken is reported, in turn, to the Office of Professional Responsibility of the Department of Justice.

So, if the Department is not satisfied with the action that is taken, the Department is free to conduct its own investigation.

Now, I review those disciplinary proposals as they come through, and I participate personally in every act of adverse action that is proposed in the disciplinary process. So, I have a pretty good feel for the way we are overseeing allegations of misconduct.

And, of course, in any organization of this size there are going to be those allegations, and from time to time there will be a basis for them—somebody drank too much, or that sort of thing. We look into any allegations of mistreatment of people under investigation, any abuse of power. And I mean to say that we do it immediately; there is no delay or backlog in these investigations.

Mr. SENSENBRENNER. Thank you.

I have no further questions, Mr. Chairman.

Mr. EDWARDS. Thank you.

Judge Webster, in the view of you and your colleagues at the witness table, it is not accurate to say that you think the FBI is operating very successfully and efficiently at the present time?

Mr. WEBSTER. There is always room for improvement, and we will be working hard to keep making our work cost effective. But I am very pleased with the momentum, I am pleased with the morale, I'm pleased with the directions that we are taking and our ability to document that we really are taking them.

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Mr. EDWARDS. Well, certainly your statistics on terrorism, white-collar crime, organized crime, Government corruption, higher espionage, are encouraging, and yet you do have these suggestions that you are making today. It seems to me that you are really doing very well under the present rules.

Mr. WEBSTER. Well, we are doing well, but when I see the shrinking in informants, it's of concern to us. Because that's always been the principal tool in law enforcement. And it's nowhere more important than in the terrorism field, because, as Congressman Hyde pointed out, we're limited in terms of how we can develop information about domestic organizations. Generally, when we get information about a group planning force and violence, which gives us a real opportunity to get there before something happens, it is the result of an informant, legitimately in place, legitimately supervised and operated.

The number of terrorist informants has dropped so substantially that I don't even make that figure public. And, so, while I'm satisfied with the directions that we're going, there are areas that I think we could improve. That's one we will have to improve.

Mr. EDWARDS. Your statement, on page 5, mentions that in making policy we must consider "fundamental questions as to the balance between individual rights and law enforcement." And I certainly agree.

Very much involved in this entire study of informants is the fourth amendment of the Constitution, the right of the people to be secure in their persons, house, papers, and effects against unreasonable searches and seizures. And, certainly, an informant in someone's home, in someone's organization, planted there, is similar to a burglar if the owner of the home doesn't know about it and the family is not advised, and this person is there. And a case can be made, and is made by some people in some respectable organizations that this fourth amendment problem is so serious that there should be a warrant requirement such as there is in searches where the police go in and search a home or an office.

You understand that that is the problem with this subcommittee, and it is your problem, too, that there must be a balance struck?

Mr. WEBSTER. I do, Mr. Chairman, and that is one of the areas that I think intrudes into the equally important value of effective law enforcement. We have to be in a position to protect those same organizations from criminal activity and to protect the public from criminal activity. And the informant has been a vehicle by which we have acquired the information which forms the basis, or the probable cause, for us to get the search warrants and other warrants for closer scrutiny of activity.

I, personally, don't see any constitutional intrusiveness by using an informant to develop information which is given without any privacy protection in order to find and identify particular criminal elements. Very often for instance, in bank robbery cases, if you don't find the forensic evidence sufficient to identify the bank robber within 24 hours, the chances of locating him by any normal forensic means are very slim. It is going to be the informant, the informant who has been operating in the streets for the FBI or other law enforcement agencies who is going to report in after he smokes the guys down and the bank robber begins to become more secure and let something out of the hat. That informant is then going to supply the information

that permits us to identify the suspect and to take whatever forensic evidence we already have, and to make a case against him.

It's that type of information, I believe, that Professor Wilson and Assistant Attorney General Heymann have both testified before the committee and pointed out that this type of information comes in randomly, and not on a regular basis. It comes in when the informant has some information and not on the basis that we figured out that somebody is a suspect in a particular criminal activity and we have to develop some kind of probable cause in order to get a warrant to put an informant in place.

I believe, personally, that the balance is best struck, as it was in 1976 in the guidelines, which require us to have a threshhold of information before we can place an informant in an organization, but puts no restriction on our receiving information on a voluntary basis from people who are already there and who want to supply us with that information.

Mr. EDWARDS. Judge Webster, I understand your point of view there. The guidelines came into existence at about the same time that the first audit of the FBI's domestic sucurity, domestic intelligence program, was taking place at the request of his subcommittee by the General Accounting Office. And, at the time, these extended negotiations began with regard to access by the General Accounting Office.

It seems to me that a step in the right direction would be that the General Accounting Office have access, to begin with, in cases where there are no informants advising. The present rules that the FBI has set up with regard to GAO audits is that even on an applicant file, on the most innocuous file in the FBI office, an FBI agent must stand between the General Accounting Office and the file. Putting aside problems having to do with informants, and perhaps the discussion on informants has muddied the water to a certain extent, our original problem with lack of access did not necessarily have to do with informants, it had to do with that we felt that an appropriate audit of the domestic intelligence activities of the FBI could not be made with that particular informant.

Would you care to comment on that?

Mr. WEBSTER. Well, I'd like to reserve some ongoing thinking about it; I'm still getting a better and better handle as I go along. I do know that the GAO and the FBI reached a memorandum of understanding as to how they would go about the business of the audits, which may or may not have been totally satisfactory to either, but seemed adequate for the purposes of congressional oversight and still protected the FBI's concept of file integrity and confidentiality.

I don't want to say that there shouldn't be exceptions, and I don't want to take a stance that you feel is too rigid and too unrealistic. In fact, I have tried not to take a stance. I am trying to keep the discussions going.

Often there are times when there appear to be imminent confrontations between the executive and legislative branches in these areas. Thus far we've always been able to work out accommodations to serve both of our needs. I certainly will pledge to you my continued effort to do this. I know, for my own sake, that when I'm confident that everything's all right, the easiest thing for me is to say, "Here,

come take a look." But there are certain principles that need to be preserved, certain outside perceptions that need to be recognized as far as the files are concerned. I do earnestly hope that we can continue to work this out in a way which will enable you to feel that you can make a satisfactory discharge of your oversight responsibilities consistent with that.

Mr. EDWARDS. Thank you for those observations, and I point out again that I would imagine that, of the files, not more than 5, 10, or 15 percent of the files of the FBI involve informants, and so, therefore, perhaps the first step in resolving this year-long, more than that, negotiation might be to step in that direction.

Mr. ADAMS. Mr. Chairman, I think, from that meeting we had a few years ago, we have made a lot of progress in this direction. At the present time we do give GAO the synopses of reports, we give them letterhead memoranda from the files which have been prepared in a manner to conceal the identity of the individual furnishing information. We have even moved to the point where—from a review of those types of documents certain selected documents are necessary for review by the GAO. We've made those documents available.

The feeling that we receive is that by making those further adjustments, on an ad hoc basis as situations arise, that the basic thrust of all of these inquiries have been met.

Our main problem and concern gets back to the fact that it's not only the person who is characterized as an informant, with a number, who is regularly operated, perhaps paid, or at least paid on a COD basis, but it gets down to those applicant files again. As Judge Webster indicated, one judge in particular was irate and said:

> I refuse to furnish the information because the derogatory information is peculiar to me, and if that file is ever turned over, my identity will be revealed. There is no way to conceal my identity.

And in order to get the cooperation of the public in reporting matters to the FBI which they feel warrant investigative attention, or even commenting on an applicant with the full confidence that they can communicate to the Government in confidence, we just reach that bottom line where it becomes extremely difficult to overturn that traditional confidentiality of information in our files by making available a total file, including administrative data, names of individuals, and things like that.

So, I think we've made a lot of progress. We've certainly proceeded far beyond that stormy session we had several years ago, and, I think, have made available much more information than we have in the past as a result of your persistence and that of GAO in this area.

Mr. EDWARDS. Thank you, Mr. Adams.

Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

Mr. Adams, I'd like to agree with you, and I as one of the cosponsors of that stormy session feel that not enough progress has been made.

And it seems to me, Judge, this morning, that the FBI is trying to have it both ways, that you don't want access by the GAO or the Congress, yet you turn around and say, "We're not going to go for a warrant."

I can't lament the fact that 200 informants have disappeared; I don't know anything about these informants. I don't know how much they were paid, whether they have a good quality, whether anybody checks up on their records, or whether they've instigated or participated in crimes. We don't know any of these, and this is our responsibility, that you have concealed.

So, with all due respect, I don't think that progress has been made, and I am as impatient as I was 5 years ago when Mr. Adams was here, in that you, it seems to me, the FBI is clearly in defiance of the law. And that is what Common Cause says, and the ACLU, and a wide variety of people who follow this, and that they are asking us, "Well, why don't you force the FBI and the Department of Justice to comply with the simple law?"

And now, with all due respect to the internal audit, we're going to wait another month or so, and then ask the same questions that we asked 5 years ago.

Would you want to react to that?

Mr. WEBSTER. Of course, my patience is longer than yours because I've not been here going through this that long. I can appreciate your concerns. I am aware that there are some nine studies that have been made since the end of 1977 by the GAO of our functions, and I am not aware that in any of those they have felt at the conclusion that they were not supplying Congress with information that it wanted.

This is the most sensitive one to date, and I am sure that all of us want to see it resolved in a proper way. I know that a GAO audit in this area would not be as inclusive as the one that I am undertaking on compliance grounds, or the study that I'm trying to develop, which has not been developed to date but the compliance investigation is, in fact, going on.

I intend no defiance of the law. I intend that this committee be in a position to exercise its oversight responsibilities.

Mr. DRINAN. Except, Judge, with all deference, you are saying that the objective of confidentiality takes precedence, really, over other requirements of public policy, and you are saying that you are not going to sacrifice that confidentiality. And you lament that 200 informants have, apparently, gone away. And those may be laudable objectives, but we have objectives, too. Saying that there are 2,400 informants in this country, and, as the chairman says, they actually violate the fourth amendment more than intrusive wiretaps or searches of houses. And you're not giving any adequate explanation why you don't want some Congressional oversight on those 2,400 people. We don't know who they are, and we've been trying for years to find out. And I've been pushing a bill to have a warrant in lieu of the FBI oversight.

So, all I can say, sir, is that you don't intend to defy the law, but the law is there, and that for years we've been saying that all we want to do is carry out what the GAO, by law, is allowed to do on our behalf.

Mr. WEBSTER. We'll continue to try to find a basis for supplying information the GAO wants to know. When we get down to the hard, gutty questions we'll try our level best to resolve them. But I believe I have a responsibility to my own organization and to the Department

to be sure that the confidentiality we've promised is respected. We have people who feel, and, in fact, have good reason to feel, that their own lives are at issue here. If we can find a way around this, and I think we can, we are looking for it. I want you to know as much about our informant setup and program as is possible for you to know consistent with confidentiality.

I think, in the months ahead, we'll put that to specifics, and if I'm not able to demonstrate it, then we'll have to face that. But I'm confident that I can satisfy you both in terms of how our payments are made, rules under which we operate, the nature of our informants, through the fact that there are so few allegations of informant misconduct that you can have confidence in what we are doing, which is what you really want to know in the first place, do you have confidence in us. It's up to me to give the basis for that.

Mr. DRINAN. All right, well, thank you very much.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

This is really a fascinating area. It just seems to me that the double standard is very operative here. Investigative journalists win Pulitzer prizes by becoming employees of organizations to obtain inside information. Two young ladies with the Chicago Sun Times did a marvelous exposé of an abortion racket; they moved the back alley into the penthouse and they became employees to see what was going on. They won a Pulitzer prize. But if you did that, why you're tearing up the Constitution. The Letelier bombing would have been great if you had had some advance information. So was the FALN. The PLO is threatening to cut everybody's hands off. They will live up to some of their rhetoric.

But why does the GAO want to audit informant files? Do they want to see if the money is well spent, or do they want to see whether your policy is appropriate? Do you know? Can you answer that?

Mr. WEBSTER. Well, it is my understanding that the GAO was responding to a request by this committee for an audit of our informant files, and, of course, they approach it as an auditor would, "We cannot audit unless we can see everything."

Mr. HYDE. I mean, what are they looking for, the appropriateness of the program, or whether you are spending money in unwise ways?

Mr. WEBSTER. Well, I think it was a pretty broad mandate.

Mr. HYDE. We hear that HEW loses $7 billion a year in waste, duplication, and in fraud.

Now, does your informant program approach $7 billion?

Mr. WEBSTER. No.

Mr. HYDE. Does it approach $1 billion?

Of course it doesn't.

Mr. WEBSTER. I don't think the audit, really, was aimed at whether we're wasting money. I suppose it was more to see whether we were infringing on anybody's rights.

Mr. HYDE. Is the GAO competent to know, to make determinations, as to the appropriateness of your informant program?

Mr. WEBSTER. Well, I suppose that they have the same frames of reference that we do with respect to guidelines of regulations. They would measure our compliance against those regulations.

I'm satisfied that we can and we should respond to some of the legitimate inquiries about how we do our business.

Mr. HYDE. Do you do background investigations on the GAO personnel? It would be a great shock for someone who works for the GAO and finds out about your operation.

Mr. WEBSTER. I think that's really not as much of a problem for us as the principle and the perceptual problem of having outsiders looking into files that are pledged to confidentiality. We have to find a way of demonstrating by techniques, many of which have been accepted by GAO in the past—summaries, excised material, and so forth—that there is no noncompliance. That's what they're looking for, I think, is noncompliance.

Mr. HYDE. Just a rhetorical question: To your knowledge, while the fourth amendment is there fortunately, you know of no mood to repeal the Preamble to the Constitution, which sets the tone for the whole document, providing for the common defense and insuring domestic tranquility?

Mr. WEBSTER. No, no, I don't; nor do I, explicitly, anyway.

Mr. HYDE. I have no further questions.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Yes.

Following up on Mr. Hyde's questions, Judge Webster, it seems to me that there are two questions that one basically has to ask either about informants or whether auditing the performance of an informant. One is whether the informant is effective, and, secondly, whether he is worth the cost either at the present time or for some time in the past.

How does the Bureau go about answering those two questions?

Mr. WEBSTER. Would you give me the second question again?

Mr. SENSENBRENNER. The question is whether the informant is worth the cost either at the present time or at some time in the past.

Mr. WEBSTER. We have run analyses on what cases have involved the effective uses of informants, how many dollars of actual recovery have taken place, how many dollars of potential loss have been averted. We separate those now so that we can't be criticized for claiming more than we should. You can look at it either way.

We do measure those. I can supply you, for the record, some information on that. Coming off of the top of my head it seems to me the figure was well over $40 million in recoveries last year, attributable to cases involving the use of informant information. But I can supply that for the record.

Mr. SENSENBRENNER. Would you, please.

[The information supplied by the FBI in response to the question is as follows:]

During Fiscal Year 1979, $1,469,028.78 was expended in payments to general criminal and organized crime informants of the FBI.

$86,463,770 in merchandise recovered and 1,729 arrests are attributable to information provided by FBI informants during Fiscal Year 1979.

Mr. WEBSTER. I don't know of anything that actually is more effective in terms of cost. Relatively minor numbers of dollars are spent in this field. We have somewhere around 1,800 informants in our general crimes program, another 1,000 in our organized crime program. I've not really seen the figures in our terrorism program; they are quite small. It was 42 last May, and significantly less than that today, and at the cost of just a few million dollars in expenditure, compared with monumental recoveries, not only the dollars in recovery but apprehension of criminals.

The UNIRAC case, which was mentioned earlier by the chairman, the investigation of organized crime in the Longshoremen's Union, shippers, and warehousemen, all involved very effective use of informants. The Letelier case was solved as a result of informant information.

If you take almost any of our major terrorist cases, or our major organized crime cases, you'll now find that we are either using informants or undercover agents for the purpose of developing the information, and doing it very effectively with what we have. But we could do it a lot more effectively if we could develop that program by demonstrating that we are capable of keeping identities confidential.

We do this a little differently than some of the other agencies. We don't use co-opted informants, people who have been caught in the act of a crime, and the crime is held over their head, and then they're treated as throwaway witnesses when they're ready to go to trial on some bigger case.

We have, traditionally, defended confidentiality even to the point of dismissing cases if, for some reason, the testimony of an informant is needed and the informant declines to give it. It's that important us, because it involves that person's life and safety, and our pledge to it.

Mr. SENSENBRENNER. I have no further question.

Thank you.

Mr. EDWARDS. We have a number of other areas, Judge Webster, that we would like to discuss with you.

We heard testimony from Bureau officials earlier this month that National Academy training for local police is fully funded by the FBI, travel as well as food and lodging. Now we understand that this policy is really of recent vintage, and up until 1968 or 1969, local officials paid for the travel to attend these courses.

Now, what is your reaction to local officials paying something, either subsistence or going back to the 1968 or 1969 practice of having the police department pay for the travel?

I point out that States have a surplus of $32 billion this year, and Federal Government has a deficit of 30, or 40, or 50, whatever it might be.

Mr. WEBSTER. Well, we do train a few foreign law enforcement officers each year, and they do provide their own travel. It's my understanding that about 1968, LEAA funds were made available for travel expenses by local law enforcement. It's really just another arm of the Federal Government reimbursing the U.S. Government, and then, when our policy changed, we just took over that responsibility. Although I can't demonstrate it today, I suspect it would probably save the Government a lot of money by paying for it ourselves rather than have it work its way through the LEAA bureaucratic process and come back to us in the form of reimbursement.

Over 60 percent of all of our law enforcement trainees come from police departments with 150 employees or less. The disparity between funds is quite great, in that some are very affluent and some have no funds at all. I suppose we could look at some kind of scholarship program, but in the end, I doubt that the savings to the Government would be worth it.

My own view is that as we move into organized crime, white-collar crime, and foreign counterintelligence, and with a relatively static

budget and diminishing numbers of agents—we'll have approximately 1,000 less agents in 1980 than we did in 1976—we furnish this training to local law enforcement on the assumption and as a matter of policy, administration policy—that State and local law enforcement will be able to pick up the slack, as in bank robbery, for instance.

I think that the Federal Government has a responsibility to make sure that this is so, by continuing to provide what is considered to be the preeminent training available in the United States to State and local law enforcement agencies. We furnish training to about 1,000 police officers a year at the National Academy, and an additional 3,500 annually at specialized schools conducted at Quantico, Va. Also, a significant number of police training sessions are conducted through our police instructors out in the field.

If we are going to pull away from what has been historically, Federal territory, and leave local law enforcement to do this job, I think we have responsibility to help make sure that its level of professionalism is as high as is possible. For that reason I don't think we should charge tuition, so that the affluent can come; the chances are they are already up to snuff. It's the weak ones that need the training, and it's the weak ones, who will stay at home if we start charging them.

Mr. EDWARDS. I think training is very valuable, Judge. I have no great disagreement with you. However, I have some difficulty understanding why banks are getting revenue sharing from the FBI in their request, and you are furnishing criminal records to banks pursuant to Federal law.

Mr. WEBSTER. I can appreciate the chairman's concern about that, and I don't have any deep emotional feeling that equates with State and local law enforcement. We do have responsibility to federally insured banks both in terms of bank robbery and bank embezzlement. The number of bank embezzlements last year was almost three times as great as the number of bank robberies. That would seem to indicate that we ought to try to help the banks find honest people to work for them, since the banks are federally insured.

I think the banks can afford to contribute something in that area, and probably would do so. I don't know how large the amount is. I know that we are now charging them postage for the exchange of fingerprint information, and that is a recent innovation made in-house.

Mr. EDWARDS. I think it would be a step in the right direction. I hope you will take that into consideration.

I would like to ask you a random question. Perhaps it doesn't disturb most of the members of this subcommittee, or House Judiciary Committee, but it does the chairman, that children coming to visit Washington see a very nice tour of the FBI. It is something they look forward to. However, as a part of that tour, they have to see people being shot—except that they are not real people, they are silhouettes.

Well, what is your observation on that?

In a violent world where we are trying to do away with as much violence, with guns, machineguns, and revolvers, as possible, is that the best idea in the world, to have children seeing a police organization shooting others?

Mr. WEBSTER. Well, of course I know the chairman's concerns about this. I think unquestionably, that is the most popular part of our tour, and has traditionally, been the thing that parents and children alike have looked forward to seeing.

I view it in this way. It is an opportunity for young people to see highly disciplined, highly trained, law enforcement officers demonstrating their skills in the use of weaponry. As I'm sure you know, the FBI trains its officers never to draw their guns to shoot a fleeing suspect. When an FBI agent draws his gun, he is authorized to shoot to kill. He draws only under those circumstances. It is an exercise in discipline and in skill.

We have to be able to deal with terrorist incidents. Our SWAT teams have to have that weaponry capability. I have never viewed it as encouraging violence, but rather as a demonstration of a law enforcement agency acting under the best of discipline, the best of skill, as contrasted with the types of violence that is associated with people that have acquired weapons and are running around the street doing damage.

Mr. EDWARDS. Thank you.

Mr. Hyde.

Mr. HYDE. I have no further questions, but I do want to comment, for the record, that I have been on this subcommittee just a few weeks, and I have served not a great length of time in Congress, but on several of the subcommittees. I have never seen the high level of staff work in any subcommittee that I have seen in this one. The analysis of the testimony, the questions provided for us to survey, from the majority staff as well as the minority staff, are the finest that I have seen in State legislatures and, certainly, in Congress. I what to commend the chairman for the superior staffwork.

Mr. EDWARDS. Thank you very much.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. No further questions.

Mr. EDWARDS. Ms. LeRoy.

Ms. LEROY. I have a copy of the organizational chart here of the Department of Justice which has one rather unique reporting requirement, and concerns the FBI. It says that, according to the chart, you report directly to the Attorney General, but the rest of the Bureau reports to the Deputy, Mr. Civiletti.

Can you explain to me, to the subcommittee, how that arrangement came about, how it works, whether that creates certain problems in terms of managing the Bureau and in terms of the Department's oversight of the Bureau?

Mr. WEBSTER. I'll be glad to try.

There have been a number of tables of organization in the past 7 or 8 years. I've seen most of them, and I'm sure that you have, too.

When I came to Washington to discuss becoming Director of the FBI, I asked for three what I consider to be essential assurances, both from the President and from the Attorney General: One was freedom of selection of my subordinates; two was reasonable independence in the conduct of my investigations for which I was responsible; and three was the right to report to the Attorney General, not to the White House, and not to subordinate officials within the Department. I felt that that was absolutely necessary in order to restore the position that the Bureau had occupied with me in the exercise of my authority to be able to bring to bear the authority that flowed from that reporting arrangement.

Administratively it would have created a minor bureaucratic problem in that the paper would, theoretically, all flow through the Attorney General's office. We both agreed that there was no intent on my part to put him to that burden; what I wanted was to be able to pick up the phone and get a decision from the Attorney General rather than from a variety of people within the Department. That is the way it has worked. The paper flows through the Deputy's office, often. We have cooperative arrangements with the present Attorney General, the Office of Professional Responsibility, with a number of the divisions over there. The Deputy and I enjoy a good working relationship, and I hope that doesn't change in terms of the relationships, the right to report to the Attorney General.

The FBI represents one-fifth of the entire Department's budget. Now, we cannot be equated with a smaller bureau functioning within the Department, and we should not be subjected to the political and bureaucratic influences that sometimes occur unintentionally in a major department; so that while most of our paper flow is to the Deputy Attorney General, I enjoy an ongoing direct relationship with the Attorney General and I have an opportunity to make sure that our concerns are known to him. That is the way it works, and I think it is working very well.

Ms. LEROY. But it is your feeling that the procedure, nevertheless, allows the Deputy to participate in the decisionmaking process?

Mr. WEBSTER. Oh, yes, indeed. The Deputy is, in effect, reviewing, to the extent that his office is involved, in reviewing any of the legal policy issues arising out of the work of the Bureau.

The budget of the Bureau flows up through him to the Attorney General. I'm meeting with him this afternoon on a specific inquiry by one of the congressional committees, and he has an awareness of what we are doing, and keeping briefed.

He has been delegated the responsibility within the Department of Justice for certifying on the use of special procedures, and undercover operations, which, as you recall, is an appendage by the authorization committees.

The Attorney General has, to date, continued to deal personally with the intelligence activities, the counterintelligence activities, of the Bureau, primarily because some of that is nondelegable, and, also, because he has a core of intelligence expert advisory men within his own office. But even in that area, some have been processed through the Deputy Attorney General.

Ms. LEROY. Can you just tell me the 200 informants that you claim that you have lost in the last—what, year?

Mr. WEBSTER. Yes.

Ms. LEROY. Are they from all the different FBI investigative programs, or ar they concentrated in one or two?

Mr. WEBSTER. I make three essential divisions: organized crime, general crime, and terrorism. And the losses are in all three.

Ms. LEROY. There is no predominance in one area or the other?

Mr. WEBSTER. Well, percentagewise, we've lost more in the terrorism program, but we had smaller numbers to begin with. And then, next, there would be a heavy loss in the organized crime area.

Ms. LEROY. How do you know that the Freedom of Information Act is the major cause of that reduction? Do your informants come to you and tell you that is why they're quitting?

Mr. WEBSTER. Well, it's not only quiting, but the inability to develop information. The GAO did a study on our informant program in which many of the specific incidences were recognized in the study.

You may recall, when I first came here I said one of my tasks was to eliminate as much as possible the rhetoric that is so frequently found in law enforcement circles, and to develop briefs, real information, data from which you can judge situations. One of the first things I did was to try to make sure that we got that information from the field in terms of specifics, rather than just handwringing, because I've heard of a lot of handwringing about the Freedom of Information Act.

Numerous examples were sent in from the field, and were made a part of that GAO audit. Since then we've had numerous other reports and illustrations of informants backing out or of not supplying information.

And that's the other thing we can't measure, how much information are we not getting from informants because of their concerns? It's the one thing, when I go around—I've been around to, I think, 18 or 19 field offices, and some 28 or 29 cities where I visited with agents and discussed their problems—that predominates. They are absolutely convinced that this is the main reason why they cannot develop informant information.

Ms. LEROY. The organized crime program, though, wasn't it there where the FBI suffered some leaks of information from within the Bureau itself? Couldn't that be just as responsible for the loss of organized crime informants?

Mr. WEBSTER. I don't really think so. There has only been one such instance of leaks involving informants that I am aware of where there has been any kind of publicity about it, and that was at Cleveland. We immediately prosecuted the clerk that was giving out that information. She was convicted, sentenced. It's the only instance. I'm not aware of anybody saying, "I'm, not giving you any more information because of what happened at Cleveland." It just is not what we are hearing.

Ms. LEROY. What is the FBI telling its informants in terms of possible confidentiality, or loss of confidentiality, when it begins to develop informants?

Mr. WEBSTER. The FBI says that they will do everything possible to preserve their confidentiality. Now, we will try to recognize that many of these informants are going to be witnesses, are potentially going to be witnesses. We encourage them to be witnesses. But if they came to us on a guarantee of confidentiality, or asked for a guarantee of confidentiality, and don't waive it, we respect that.

Ms. LEROY. The informants development that you are about to undertake, in the list of things you said that you are going to look into, I don't recall your mentioning whether you were going to analyze the actual usefulness of informants, how much they contribute to the success of——

Mr. WEBSTER. I think we have already given that information.

Ms. LEROY. In what sense?

Mr. WEBSTER. I've seen the figures on the amount of dollars that are spent on informants, and recoveries and convictions that result from dollars spent. So, I think we already have that type of information.

Ms. LEROY. Is that information available to the Congress?

Mr. WEBSTER. I believe it is; I believe I have given testimony on it in the past. I'll try to supply that for you.[1]

[The information referred to follows:]

In fiscal 1978, criminal and domestic security informants were paid a total of $1,481,397.63.

These informants provided information during fiscal 1978 resulting in recoveries of stolen property and contraband in the amounts of $51,826,930 in FBI cases, $6,308,138 in State and local cases, and $2,247,145 in cases of other Federal agencies. The total number of subjects identified and/or located in FBI cases is 1,064, total number of FBI arrests is 722, total number of arrests by local and State agencies is 1,250, and total number of arrests by other Federal agencies is 184.

Mr. EDWARDS. Mr. Starek.

Mr. STAREK. Thank you, Mr. Chairman.

Judge Webster, I would like to ask you about the reduction in the corps of special agents. You mentioned earlier that your losses will total 1,000 by the end of the next fiscal year. I wonder if there has been any study or any thought given to this reduction, and how it relates to the effectiveness of the Bureau.

It's a broad question, but I wonder if you could comment on that.

Mr. WEBSTER. Well, the reductions have had an impact in a number of areas. While we are accepting these reductions—the ones being in the more recent years when we are in an economy crunch and every agency is being asked to accept reductions—we're working to try to minimize the impact by reorganizing, restructuring internally, putting people where they can do the most good. We never had a lot of fat to begin with that I've been able to determine, so that some of our programs have, necessarily, had to be curtailed or reduced.

A good example is our program in fugitives, which isn't all that bad. We were chasing military deserters. We felt that was something the military could worry about, most of those people go home anyway; and we could pick up a little bit of trained manpower and put them into organized crime, or white-collar crime, and we've been doing things like that.

The bank robbery program will face a serious reduction in response. Again, that is not all bad because there has been a policy of trying to take a less dominant role in that field. But bank robberies are going up, not down, and we recently had to double up our bank robbery squads in Atlanta, for instance, where they have gone up dramatically; but around the country we have been trying to develop an ad hoc response. In each of the communities our special agent in charge would sit down with the local chiefs of police to try to develop the kind of response the FBI should make in that area.

This is the kind of response where we can help on chasing the fugitives, using our NCIC System, that kind of thing, which is the kind of response we have to be able to face when a local community needs our help. One situation occurred last year in which the bank robbers' first

[1] During fiscal year 1978, expenditures in the FBI's criminal informant program totaled $1,406,040.84, while total recoveries attributable to cases involving the use of informant information were $56,148,587.00. No statistical records were compiled for that fiscal year relating to the number of convictions or to the amount of economic loss averted.

stop was at the police station. They tied up the two policemen, shot the tires out, and then went in and robbed the bank. Now, obviously, we have to provide a better response at making our NCIC system available to the police.

So, we're "making do" with these reductions. They are having an impact. There is a reduction that I am concerned about in the terrorism program where, I think, we lost 18 people in our coordination program. We really need nine of them back. This was a bookkeeping shuffle oversight of some kind because when we went up we thought we had what Congress had restored last year, and found that we didn't have what Congress had restored as our zero base. So, we're short in there. We'll have to find somebody from somewhere for that area if that is not given back to us, because we simply can't operate our coordination program effectively with a reduction of nine people.

We're learning to be more effective, we have to be with fewer people. But we have to just simply say that some programs are not going to get the attention that they used to get. Some of this is good. We don't investigate individual car thefts anymore, but we do have about 500 car theft rings that are very important commercial theft operations, and they need to be followed. So, we have to investigate them.

I would like to take the people we saved by making those policy decisions and move them into our priority programs. Instead, we're just losing them, period.

Mr. STAREK. Let's concentrate, on one particular area, and that is bank robberies.

We have heard that some banking institutions and members of the banking community are somewhat upset over the Bureau's reduced role in investigation of crimes against banks. Have you had enough time to evaluate the effects of your reduced effort, beginning, I believe in fiscal 1979. Also, could you elaborate on what the specific objections of the banking community are?

Mr. WEBSTER. Well, of course the banking community has looked on the Bureau as the expert in this field for years. The Bureau has dominated bank robbery. When I was U.S. attorney in 1960, the Bureau took umbrage of any State activity on bank robberies, those were Bureau cases. And the high level of solution rate encourages bankers to hate to see us move out of the picture. I think it's over 70 percent as a solution rate.

It's too early for me, really, to give you any meaningful figures on what the effect of our reduced response has been, because it's only been a recent development. I have asked that our field develop figures which we previously did not have to keep track of State deferrals, where the case went into the State court, what happened, did the conviction rates stay the same or did they go down. In other words, the kind of question you're asking me has to be answered on a data base, and I'm trying to develop that data base as we go along now.

Mr. STAREK. Thank you very much.

Thank you, Mr. Chairman.

Mr. EDWARDS. Judge Webster, with regard to the NCIC and the Identification Division, as you know the Bureau has two systems now of disseminating criminal records, one through the NCIC and the other is through IDEN by mail. And there is duplication. I'm sure that it bothers you to have two systems competing one with the other. And we've talked about this in some depth.

The NCIC is having technical problems throughout the country. It has downtime. One State identification unit, a police organization that I visited in the South just a month or so ago, they had stopped sending inserts, whatever you call them, to the NCIC because there were already 200 backed up. So, downtime was a serious problem.

What are your plans for curing the technical difficulties, just technical difficulties, for the NCIC?

It's going to cost some money.

Mr. WEBSTER. Yes, it will, and we have budgeted for equipment to improve in our NCIC System—we call it front-end Communications Controller—to shorten the response time and permit retention of backed up inquiries in the event of a system failure. Unfortunately, we have run into a problem that predated my coming to Washington, involving the overall policy on message switching.

The message switching issue does not relate to the general information currently supplied by NCIC on fugitives, missing persons, and stolen property. We are getting some 250,000 transactions a day in those areas. The issue arises primarily with regard to the gathering of criminal histories on particular subjects and the sharing of that information among the States.

The consensus in the criminal justice community is that there should be some decentralization of arrest and disposition information so that States can maintain their own criminal history records and make them available on their own guidelines to other States in need of that information. This would involve returning to the States which are supplying criminal history information—there are only 13 such States—their files, and providing an index system in Washington, an electronic index system, whereby a State could, instead of making 50 phone calls around the country, could query the central index to see if any other State had information concerning a particular person.

Now, the message switch would automatically refer the request to the State that had the information, and that State, in turn, under its own guidelines could or could not supply that information to the requesting State. This would be an important step forward in my view. But it is encumbered at the present time by the concern that somehow or other this message switching capability would turn the FBI into an Orwellian state, despite our repeated efforts to demonstrate that there would be no unauthorized data collecting at the FBI, and that we would submit to any kind of responsible auditing or monitoring process.

We have sort of bogged down over the word "message switching" so that when we try to get front-end communication equipment, partly because of our own approach and partly because of the concerns about message switching, we create a problem where some persons are wondering whether we're attempting to engage in covert message switching through acquisition of our front-end equipment.

It's taken a long time, and I think we've gotten pretty well through that and have assured the Congress in a satisfactory way that there will be no unauthorized message switching. But we still haven't gotten authorization to put in that front-end communication equipment to shorten the response time.

And I am hoping that we can find a way, Mr. Chairman, to break through that, because in a very real sense the safety of police officers is involved here if the response delay is protracted, the chance of using

the facility effectively to apprehend dangerous fugitives, armed fugitives, and so on, goes way down. And I would not like to see the latter develop.

You are quite right. There is some duplication, of arrest and disposition information in our internal Identification Division system and the external NCIC system. In the Identification Division there are plans to reduce very substantially that duplication. The Advisory Policy Board for NCIC, which is largely the State officials, and including a Federal judge and some other people, have some very interesting plans along that line. I don't know how we'll do it, but we've got to break the logjam in order to get the needed equipment.

Mr. EDWARDS. Yes, I understand.

Mr. Hyde.

Mr. HYDE. Thank you, Judge.

I have heard general allegation that the FBI is burdened with antiquated equipment. Could you tell me what significant equipment is antiquated?

Mr. WEBSTER. Well, I have just mentioned a most serious problem in our NCIC program. The host computer is about 10 years old; the present communications processor is badly outdated. The registered front-end equipment will materially improve the system's performance.

And there are some other items of equipment that I could supply for the record that I think are in need of replacement or upgrading. And, of course, we have an ongoing need to make sure our automobile fleet is capable of pursuit work, is in good condition, and has radio equipment that is "up to snuff." That is the area that is usually deferred whenever there is an economy crunch. It usually turns out to be a poor economy because by the time you are authorized to buy it, it costs substantially more, and, in the meantime, you've suffered from inferior equipment, which is more costly to maintain.

Mr. HYDE. If you could, provide me personally with a copy of some of the upgrading of equipment that you need. It seems all our modern equipment goes to Cape Canaveral, not the FBI.

Thank you.

[The information referred to follows:]

The following sets forth major equipment items which require upgrading during the next few fiscal years.

National Crime Information Center (NCIC) Telecommunications Processor.—The funding for this equipment was originally included in the FBI's fiscal year 1977 budget; however, the procurement of this equipment has been delayed primarily due to privacy concerns. The funding has been reprogrammed to fiscal year 1979, and the FBI must soon initiate efforts to reprogram the funding to fiscal year 1980.

Secure telephone equipment.—The FBI requires secure telephone equipment to support its Foreign Counterintelligence activities. During the fiscal year 1980 budget cycle, a total of $1.3 million was cut from the FBI's budget request because it was mistakenly believed that the Secure Telephone Unit (STU)-II project was behind schedule and that the National Security Agency (NSA) would not be prepared to procure production model equipment. A request for funding to purchase STU-II equipment is included in the FBI's fiscal year 1981 budget request.

FBI Computer Center host computers.—The IBM 360/65 host computers in the FBI Computer Center are over 11 years old and are no longer supported by the manufacturer. One of these host computers supports NCIC and another supports the Automated Identification Division System (AIDS). The FBI initially included purchase funding to replace the NCIC host computer in the fiscal year 1980 budget; however, the requested funding was cut prior to submitting the Department of Justice's budget to the Office of Management and Budget

(OMB). Current plans are to replace all FBI Computer Center resources reaching the end of their useful life by fiscal year 1982. This upgrading procurement will be accomplished with existing equipment rental funding.

AIDS.—The FBI is involved in a comprehensive project to automate the fingerprint card processing and related activities of the Identification Division. For the past few years, the FBI's budget has included a $3 million base for the purchase of special purpose fingerprint processing equipment; however, during the fiscal year 1980 budget cycle, all funding for the purchase of this equipment was cut. The FBI's fiscal year 1981 budget includes a request for $3 million to purchase a Search-Processor Module and additional special purpose equipment will be purchased in the following fiscal years.

Terminals and miscellaneous computer equipment.—The FBI's highest priority automation efforts now involve the development and implementation of systems which directly support the FBI's investigative mission. The FBI's equipment budget base includes funding to purchase terminals, cryptographic security equipment, and other miscellaneous computer equipment; however, a request for additional funding is included in the pending fiscal year 1980 budget.

Passenger automobiles, surveillance vehicles, and automotive maintenance equipment.—One quarter of the FBI's passenger automobile fleet must be replaced each year to maintain the fleet at a current level. Vans and motorcycles are required for surveillances. In those instances where it is cost effective for the FBI to perform automotive maintenance, an automotive shop must be stocked with necessary maintenance equipment. The necessary funding to maintain the FBI's automotive fleet and surveillance vehicles is contained within the FBI's equipment base.

Radio communication equipment.—Most FBI investigative efforts require FM radio communications facilities to effectively conduct investigations. The fiscal year 1980 budget, now pending before the U.S. Congress, includes $5.5 million to replace radio equipment reaching the end of its useful life and to implement appropriate security features within the FM radio system.

Technical support equipment.—The FBI's field offices require various types of technical equipment, such as audio collection, recording, physical surveillance, physical security, photographic, and crime scene examination equipment, to support their investigative activities. The FBI's pending fiscal year 1980 budget includes approximately $8 million for both technical equipment replacement and upgrading.

Mr. EDWARDS. Thank you, Mr. Hyde.

And, as you know, Judge Webster, the subcommittee is very interested in clearing up this NCIC business. You very probably need a new computer. You put all of the front-end equipment on that old computer and you've still got an old computer.

Mr. WEBSTER. That's true.

Mr. EDWARDS. So I'm sure that both this committee and the Appropriations Committee would look very favorably on a purchase like that.

And, as you also know, we are very interested in resolving this problem of the index decentralization. You're talking about saving many millions of dollars just by attrition. I would trust that you are not going to have to have anywhere near the number of people classifying fingerprints, and so forth. However, you've got an internal problem, I'm sure; that is that you have buildup just like any organization has, and somebody's going to lose some power there. And I'm sure that you are more than capable of resolving that.

Mr. WEBSTER. That is the least of my concerns.

Mr. EDWARDS. Counsel.

Ms. LEROY. I would like to spend a couple of minutes asking you some questions about white-collar and organized, you know, increases in those two areas.

In foreign counterintelligence and domestic security, people talk a lot about the——

Mr. WEBSTER. I'm sorry, I couldn't hear you.

Ms. LEROY. Threat assessments.

Mr. WEBSTER. Threat assessments.

Ms. LEROY. Has the FBI developed any kind of threat assessment for organized crime or white-collar crime in terms of predicting the level of activity in a country and, you know, coordinating the response accordingly?

Mr. WEBSTER. We're developing the capability to do that through our Organized Crime Information System, which I think you may be aware of, where we are beginning to put all of our organized crime information on computer, which will permit terminal analysis and input in each of our 59 field offices. The tradition, we have, over the years, developed a pretty good analysis of the structure of organized crime in this country. We have a great deal more we could learn about it, and we are learning about it through undercover agents and other techniques. But as we begin to develop this capability through computer analysis, I think we can then give you a more accurate reading on what you call "the threat."

Ms. LEROY. The 70 new positions you gave on organized crime, what do you plan to do with them? Are they going to go into that information system, or——

Mr. WEBSTER. A significant part of them will be in that area.

Ms. LEROY. In what capacity?

Mr. WEBSTER. Pardon me?

Ms. LEROY. In what capacity? Will they be agents, or analysts, or——

Mr. WEBSTER. Both.

Mr. ADAMS. In the white-collar crime program that you mentioned there is also a problem when we get into the assessment. You can take the banking field, which is part of the white-collar crime program. We have 80,000 federally insured financial institutions. We have about 4,000—bank fraud and embezzlement cases going. There is no way to take figures like that and relate them to how many people in private business are, perhaps, engaged in some sort of fraud.

In the political corruption area, where we are now up to 1,030 cases compared to half that number 6 or 8 months ago, you can't really, make a threat assessment and say that if we have developed twice as many cases in this area, that political corruption is doubling in the United States. Because there is no way to measure why or how these cases are being developed other than from each individual case.

So, we will never be in a position, as I can see it, to take matters within our specific jurisdiction in the white-collar crime area and apply that to some national assessment of saying the country is made up of criminals, everyone has got his hand in the till. Those are sort of deductions made by statistical analyses that make everyone squirm. There is just no way to do that.

Ms. LEROY. How do you work with the various inspectors general offices in the departments? I believe there are 12 departments that have inspectors general?

Mr. WEBSTER. This is just getting off the ground. As you know, there is a combined task force in the Department of Justice, chaired by the Deputy Attorney General. We have representation on that committee for the purpose of assisting and setting up standards providing expertise in various ways.

We are also trying to develop and have made some pretty good progress based on our experience with GSA to develop a kind of threshhold level at which certain types of cases, or certain types of investigative matters, should be referred to the Bureau for criminal investigation. We don't perceive our role as being in the housekeeping aspect of an agency. That is really the Inspector's General responsibility, to keep house and to keep things functioning properly. At the same time, we doubt that the Inspector General will develop the investigative capability to successfully conduct a major investigation of fraudulent activity within the agency. We expect that when that type of activity has been identified at the initial stage, that it will be reported promptly to the FBI for investigation.

Ms. LEROY. Do you have any written guidelines for those kinds of cases, or are you working on them?

Mr. WEBSTER. We are working on them. I think that will come from the Deputy's office at some future point.

Ms. LEROY. Do you see any possible problems in terms of duplication of effort, FBI versus Inspector General's office?

Mr. WEBSTER. Well, there is always the risk of duplication of effort if neither hand knows what the other is doing. But if the activity is coordinated so that the investigation is promptly handed over to the FBI, that would cut that duplication down considerably.

Ms. LEROY. I have some questions about your undercover activities. It might be better to have the FBI respond to them in writing.

Last year, as you obviously know, there was some special amendments exempting the FBI from certain normal operating procedures for Government agencies.

Mr. WEBSTER. Yes.

Ms. LEROY. And I assume that you'll be asking Congress for the same exemptions this year. But so far this committee, anyway, doesn't have very much information on how those undercover activities are operating.

And I wonder if you would be willing to provide the committee with some fairly specific details about how many such operations you're talking about, how successful they've been, whether you've had any failures or problems, and costs involved for so many failures.

Mr. WEBSTER. We would be happy to do that. I don't know what form the questions will take, but because of the sensitive nature of this, we might ask on those that we prefer not to make in writing to come up and brief the committee or the staff on those areas.

Mr. EDWARDS. Yes. Without objection. I think that we would like to do that.

Judge Webster, with regard to your FBI policy regarding hiring professionals at other than entry-level positions, that is not the ordinary way an organization would operate.

What are the advantages of encouraging career commitments to the FBI? Have you considered any alternatives, especially in areas where specialized expertise or independence for normal career patterns of the FBI might be helpful as in the Planning and Inspections Division?

On a more personal level, why did you decide not to bring in more of your own advisers when you first arrived with the Bureau?

Mr. WEBSTER. If I could answer the last question first, my own assessment of the situation was that I brought whatever special

talents and background I had to form the basis for my selection with me. I had no reason to believe that the officials in the FBI lacked the expertise for which they were world-renowned, and I wanted to see before I made any kind of damaging shuffling of the Bureau what, in fact, was needed. It is a career-oriented organization, similar to the military, in which highly trained officials have given a wide range of experiences and worked their way into a career path.

Without trying to make this answer too long, a relatively recent career development program is going into effect; it's going through fine tuning, and it makes a fine vehicle for individuals within the service to work their way into management and other special positions. That seems to be working; it can work even better. I'm fully committed to it.

At the same time, I felt that if there were certain areas where we needed expertise that we didn't have and couldn't expect to have, and which reasonably was really outside a career path for a manager, investigator, a leader type, that we shouldn't hesitate to go out and employ such people from the outside.

It is suprising how much talent we have from inside the Bureau, Mr. Chairman. Recently I was speaking at the University of Virginia, and I had lunch with the president and deans of the college. So I asked about some figures; I thought they might be interested.

Now, this is a long way of answering your question, but I think it is kind of interesting.

We have 1,460 degrees in social studies among our special agents; 1,378 in business and commerce, 1,048 in law, 959 in accounting, 830 in education, 267 in English, 223 in bioscience, and 106 in foreign languages. We have 738 in master's degrees, in addition to law degrees, and 36 Ph. D.'s within our career program. So, we are developing a considerable range and depth of skills, speaking in educational terms.

Now, since I've been onboard, I can name a number of people that we brought in from the outside who had special skills. Al Bayse is the Deputy Assistant Director for Development in our Technical Services Division. He is our computer expert. Reed Phillips was brought in as an automation expert. Raymond Heider was brought in as an intelligence analyst. Robert Lynch was brought in as an intelligence analyst. Then I have two special assistants, former law clerks, who have been serving me in a variety of interesting ways within my own office. Robert Wallace was brought in as a program analyst for the Records Management Division; Mr. Hecht, electronics optical engineer; Mr. Henton, a computer scientist; Mr. Fowler is another computer specialist; Mr. Bell an operations research analyst.

In addition to that there are about an equal number of employees occupying a wide range of audiovisual, behaviorial sciences, and so on, who predated my arrival. This is on an as-needed basis. When we need the skills and don't have them, we'll go looking for them.

Mr. EDWARDS. Well, that is very encouraging information. Certainly, crime is going to get, and is getting, more sophisticated, more difficult to detect—computer crime, transfers of money by changing the mechanism of a computer. You have to have capability of resolving that.

And do you think you do have?

Mr. WEBSTER. Well, I think we have it better than anybody else, but we have a long way to go. We have a computer at Quentico where

we train people in detection and solution of computer fraud crimes. And we have been involved in computer transfer and electronic transfer of fund cases. I think we are developing considerable skill in this area and will be able to help businesses in the reactive stage as well as being able to make some contribution to the preventive stage.

Mr. EDWARDS. Do you send some of those agents to institutions like Princeton, or Dartmouth, that have great computer centers to train their students?

Mr. WEBSTER. I'm not sure how much of that we've done yet, but given the funds, I would like the opportunity to do that. As you know, we send representatives to the Naval War College and other institutions to develop high level skills. This certainly is one that we are confronted with at the present time, and it is not going to get any better. If we have the funds, I would like to do it.

Mr. EDWARDS. My last question, Judge Webster, is about the New York field office. Apparently, the New York field office is different in some ways, because it has Mr. Neil Welch there; and, from some articles that we have read, it is innovative, perhaps more innovative than some of the other offices.

Why did you decide to make those changes in the New York office, and what are your aspirations there?

Mr. WEBSTER. In New York, as in each of the large field offices, I have tried to select for field commanders those who have demonstrated an ability to reprogram into the priority areas and who have had the experience and the will to succeed in this area. Mr. Welch is certainly one of those. His successful experience in organizing the Philadelphia office impressed me, and so I asked him to take over the responsibility of Assistant Director in charge of the New York Division. That is our largest single office. Ten percent of our field resources are in New York City. We have six special agents in charge.

We have two major resident agencies: The Brooklyn-Queens Resident Agency, which is headed by a special agent in charge, and that includes the Kennedy Airport, all of that area; and then New Rochelle is another major one, which is also headed by a special agent in charge. Then we have two special agents in charge of foreign counterintelligence operations in New York, and another one supervising organized crime and general crimes. In addition, we have a special agent in charge responsible for administrative matters.

Recently, Mr. Welch made some proposals for reorganizing the New York field office in terms of the realinement of certain personnel and certain personnel functions, and the development of a planning capability within the New York office. He made two or three trips to Washington to go over those with me, and with my executive conferences. All of those proposals were thoroughly analyzed by our headquarters coordinating function, have been approved, and are in the process of taking place.

By means of these personnel moves, we not only put people where the population is in a more effective way, but we have the potential for increasing by significant percentages the allocation of resources to our top priority programs.

Mr. EDWARDS. You mentioned Kennedy Airport. I would imagine that some of the work there is done with regard to thefts from interstate shipments?

Mr. WEBSTER. That's true.

Mr. EDWARDS. Don't you think that $5,000 for an entry figure for the FBI, to the Federal Government, is rather low; do you, as you go to work and open a case on a $5,000 theft, rather than leave that to the local police?

Mr. WEBSTER. Well, I think we have to follow, to some extent, the guidelines, the prosecutive guidelines, of the U.S. attorney. We work very closely with Mr. Fiske in the southern district of New York, and with the U.S. attorney in the eastern district of New York, to determine what their own priorities are, because we don't want to be spinning wheels and going in with amounts that are too low if they are not going to accept them. And we have two very fine U.S. attorneys in that area, very practical about their approaches to dollars.

Mr. EDWARDS. Well, I believe there are no more questions. And we thank you, Judge Webster, for a very helpful testimony.

And, gentlemen, we are pleased to have you with us today.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

FBI OVERSIGHT

TUESDAY, MARCH 4, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL
RIGHTS OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., in room 2141, of the Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Seiberling, Drinan, Volkmer, Hyde, and Sensenbrenner.

Also present: Representative Rodino.

Staff present: Thomas P. Breen, counsel; Catherine LeRoy and Janice Cooper, assistant counsel; and Thomas Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

The gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Chairman, I will ask unanimous consent that these proceedings may be open to television and other camera and video.

Mr. EDWARDS. Without objection, it is so ordered.

The hearing today has to do with the undercover operations of the Federal Bureau of Investigation. The subcommittee is presently considering the budget of the FBI for 1981, and the budget for 1981 has an increase in undercover expenditures from $3 million up to $4.8 million.

We have two witnesses today, and I suggest that the judge, the Director of the FBI, will go first, and then Mr. Heymann, and then we will have questions after that, if that is agreeable with the witnesses.

At this time I yield to the very distinguished chairman of the House Judiciary Committee, the gentleman from New Jersey, Mr. Rodino.

Chairman RODINO. Thank you very much, Mr. Chairman.

I am pleased to welcome the Director of the Federal Bureau of Investigation, Mr. Webster, and the Assistant Attorney General in charge of the Criminal Division, Mr. Heymann, this morning.

I consider this a very important responsibility of the Judiciary Committee, and especially of this subcommittee that is so ably chaired by Mr. Edwards, the Subcommittee on Civil and Constitutional Rights, and I believe that that subcommittee was appropriately named because it has been a bulwark of strength in attempting to assure that the agencies of Government entrusted with law enforcement recognize that they have a very principal responsibility; that is, not to overly intrude into the rights that are guaranteed in the Constitution, the civil liberties that we all hold and cherish so dearly.

This particular hearing, I believe, which is a hearing that was scheduled some time ago by the chairman of the subcommittee, is one that is, I think, very significant because it comes on the heels of investigations that were conducted by the Department of Justice and the FBI where many, many questions have been raised.

This committee, first of all, prides itself on—and I am talking about the full Judiciary Committee—prides itself on acting responsibly in all cases, and I think that the committee, as a matter of fact, showed that it cannot only act responsibly, but is certainly very, very anxious that the whole world know. This committee had before it, 2 weeks ago, a resolution of inquiry, which the committee felt was not responsible, which the committee reported adversely, and the Congress, acting pursuant to the recommendation of that committee, did act also responsibly. I think the whole tenor of the argument was that while we want to assure that the Justice Department is guaranteed all the tools necessary, and the funding, to go forward, to ferret out criminal conduct in order to protect our society; at the same time I think that we have the principal responsibility of assuring, however, that the Department does not abuse that authority.

So I am especially interested, Mr. Director and Mr. Heymann, in what you have to say. I say that because on July 31, as the sponsor of the FBI Charter, I made the following statement prior to my introducing that proposal.

I stated at that time that I was very pleased with what you are attempting to do, and I direct this to you, Mr. Webster, because the FBI had come under some criticism—and I think justly so—for its past actions over the many years, and I stated then, and I'd like to merely repeat that statement:

> It would appear to me that the goals of the American people are as follows: that the focus of all FBI investigations is criminal conduct, and not activities otherwise protected by the Constitution.

I went on to say that I did have concerns and reservations generally about the absence of specific guidelines dealing with matters such as the identity of informants, the use of various techniques in investigations, the retention and use of information, and the Bureau's criminal records, and other areas which touch on sensitive questions of civil liberties.

Then I also added:

> Therefore, I am particularly pleased that the charter calls for the promulgation of guidelines which will set forth with particularity the work rules in these and other important areas.

I am confident that the Attorney General's guidelines, work on which I have been made to understand has already begun, will protect the full enjoyment of all constitutional rights, the freedom against unreasonable intrusions, by whatever technology, while at the same time providing safe, sound, and effective law enforcement.

I must say, Mr. Director, that while I made that statement in full confidence that the work rules were going to be such that they would deal with specificity, I would like to know at this time, and during the course of the questioning, after listening to your statement, whether or not you have, because I do have some grave reservations in my mind as to whether or not if you do not have specific guidelines, you can operate and do the job that is necessary in the area of law

enforcement, at the same time guaranteeing the constitutional rights of individuals without intruding on their liberties.

Thank you very much, Mr. Chairman.

[The complete statement follows:]

STATEMENT OF CHAIRMAN PETER W. RODINO, JR.

I am pleased to have the opportunity to participate in this important aspect of the work of the Committee on the Judiciary,

There has been some concern expressed to the effect that the Congress, and this Committee, should do nothing until the current investigative effort of the Department of Justice is complete. This view, if it prevailed, would mean an abdication of this Committee's constitutional obligations to authorize funds for and exercise legitimate oversight over the Department of Justice.

This Committee will not interfere with the process of pending cases, nor will it tamper with or prematurely attempt to examine any evidence in such cases.

We have in the past and will continue to look at the priority programs of the Department of Justice and the Federal Bureau of Investigation. If we are to provide appropriate funding, we must understand the programs of the Department.

Undercover operations are difficult, often dangerous and, by their nature difficult to control. Since these operations often involve activities by persons not directly employed by the government we must assure ourselves, to the extent possible, that all logical steps are being taken to control their activities. The danger of improperly involving or implicating innocent citizens in these sensitive investigations is a result which we have a duty to prevent if at all possible.

This Subcommittee has been deeply involved in hearings on the FBI Charter. In July, when the Charter was initially introduced, I stated that certain concepts which are embodied in the Charter would make the work of the FBI more nearly conform to the desires of the American people. Two of the concepts which I discussed were (1) that investigative techniques be examined with the requirement for minimal levels of intrusiveness into protected activities and (2) that periodic review of investigative activities be addressed.

These two concepts, I believe, go hand in hand, for without ongoing review and guidance of investigative activities, there is the risk of intrusivenss and violation of protected activities.

When I introduced H.R. 5030 (the proposal for the FBI Charter), I particularly emphasized that the focus of all FBI investigations should be criminal conduct and that the proposed Charter provides a method for systematic accountability by the Bureau. Our purpose today is to examine these precepts in detail to see if undercover activities conducted by informants adhere to the Charter's standards and to such guidelines as the Attorney General has established for protecting the constitutional rights of persons being investigated with respect to electronic surveillance and all other aspects of undercover activities.

I am particularly concerned about the degree of ongoing review which the Bureau and the Department utilize in their undercover activities. The process through which the FBI Charter as introduced was forged involved detailed analyses of, among other things, undercover operations. I will be very interested to hear from our witnesses today about the degree to which current operations have conformed to the proscriptions in the draft Charter. If there are inadequacies in the Charter from a realistic day-to-day undercover operations perspective, it is imperative that we understand these inadequaices.

I welcome the opportunity to hear from our distinguished witnesses on this subject and look forward to a continuing mutual effort to make our criminal justice system the best that fair minds can devise.

Mr. EDWARDS. Thank you, Mr. Rodino.

The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

I would like to welcome Director Webster and Mr. Heymann, and express my gratitude to the chairman for his having scheduled hearings on the matter of the FBI's undercover operations, commonly referred to as sting operations.

We in the Congress have, as you know, Director Webster, only recently become sensitized to the potential impact of undercover operations, which the Bureau stages.

In fact, the chairman has been quoted as saying that the Abscam operation, just completed, would not have been possible under the proposed charter.

My reading of that document, however, indicates to me that proposed section 533(b) (1) specifically permits the Bureau to conduct an investigation on the basis of facts or circumstances which "reasonably indicate that a person has engaged, is engaged, or will engage" in a criminal activity.

I invite you to confirm or correct my interpretation of that section of the proposed bill.

In the course of this hearing, I expect to ask a number of questions designed to establish the overall effectiveness of these operations, the conviction rate relative to other investigations, and the investigative costs per conviction, and similar questions.

I suppose parenthetically it's too much to hope that the cost accounting that you will be required to make be applied to the Department of Housing and Urban Development, or HEW, but we can hope.

I am also quite concerned, as you might suspect, about the extent to which you do engage counsel to monitor these activities.

Now it seems to me that audio and video recordings, legally acquired during these sting operations, constitute the best evidence within the meaning of the rules of evidence, and most clearly demonstrate to a jury the actual events in the particular case at bar as they occurred. Video and audio recordings help to resolve many otherwise troublesome problems of identification, and exactly what was said or done, and under what circumstances.

We are also concerned about the leaks which may well have prejudiced the rights and the reputations of some, but also which sabotaged, rather effectively, your ongoing investigation.

I look forward to hearing your statement and your response to my concerns.

Mr. EDWARDS. The gentleman from Ohio, Mr. Seiberling.

Mr. SEIBERLING. Thank you, Mr. Chairman.

Mr. Webster and Mr. Heymann, I have read your draft statements, prepared statements. I haven't read the final version. I presume there are no major substantive differences; is that correct?

Mr. WEBSTER. Yes.

Mr. SEIBERLING. I noticed that in both statements, it is pointed out that the FBI and the Justice Department are not prepared to back off or to curtail investigations of this type.

I think that is a bit of a strawman, because I don't know anybody who has suggested that you back off or curtail these investigations.

I certainly think that wherever you have any reasonable or probable cause to believe that officials or anyone else are engaged in corrupt activities, you have the obligation to go ahead and investigate those, and pursue them to the end, as you say in your statement.

I am, however, concerned with some of the implications of the techniques used. Perhaps this is a novel approach or perhaps we just didn't know about it before now; but, in any event, we now have some curtains drawn aside, and we have had revealed to us some of the techniques that have been used in trying to ferret out possible violators and possible corrupt officials.

I think we should not try to explore your activities in connection with any of the people whom you have some reason to believe may have been corrupt, and I don't think this committee should, as long as there is a possibility of prosecution, but I do think that we can investigate the processes used in connection with those who were the targets of investigation and were not found to be corrupt, and those names have been revealed in the newspapers, again perhaps unfortunately, because it does put some kind of a cloud over them.

I think that we owe it to the Congress and to the country to explore the techniques and find out how it is that people who have turned out to have no predisposition, to have no corrupt motives, to have in effect not been enticed by any snares that were set, how they could have been brought into, first of all, an investigation posture; and second, how they could be brought to go to whatever houses or other places where you had these video cameras and so forth, and what was used to entice them. We have one case of a Senator who, as far as I can determine from the newspaper reports, was enticed by the prospect of perhaps a campaign contribution; a perfectly legitimate thing. Although when he found out that there was some sort of money for possible legislation, why, he immediately turned it down.

You have another one reported where a lawyer, not a Member of Congress, but a lawyer, was approached on the possibility of some Arab sheik hiring him on a retainer basis; again a perfectly legitimate thing; and when he found out what the other conditions were, he said, "Nothing doing."

Now we have other instances of Congressmen who were apparently intrigued into exploring promises that there were some big investors who wanted to invest in their district. Every single Member of Congress wants to have investments in his district to help the employment situation and produce an expanding economy, and that is a perfectly legitimate thing.

I really think we owe it to the country to explore to what extent honest motives were used to suck people in to what might have been a trap, had they turned out not be honest people. I think we ought to explore it only in the case of those who turned out to be honest and not to have corrupt motives. We must see how this could happen, because I think that those cases carry the most serious implication of all the very serious implications in this entire affair. If necessary, I think we should go into secret session, if otherwise we would be revealing methods of the FBI or embarrassing individuals.

I thank you, Mr. Chairman, for this opportunity to express my mind on this very, very important subject.

Mr. EDWARDS. The gentleman from Missouri, Mr. Volkmer.

Mr. VOLKMER. I'd just like to briefly say that I wish to renew my confidence in the Director, but I also have the same concerns as the gentleman from Ohio who has just spoken, and it's not with just how this applies to this one operation, but how it may apply to other operations with other people throughout the country who are, I would assume, innocent until proven guilty, and good people in their community, and how they, too, may be caught up into some type of operation, any type of operation, unless there is—and the thing I'd like to focus on sometime, if not today or tomorrow, maybe 6 months from

now, or sometime when it can be, as to the management of these operations and how detailed that management actually is, and the scope of involving people, because of the matter of Senator Pressler and how that came about, and how the—well, some way enticement was brought about, as the gentleman from Ohio has pointed out, purely legitimate.

To be honest with you, if somebody had walked up to me and said, "Harold, I know some people who would like to give you $1,000 or $500, even $100, for your campaign. There is a group of them down the street, I'd like for you to come down and visit with them and talk to them about your campaign," Mr. Director, I'm afraid that I'd say, "Sure, I'll be glad to go down."

I don't think there are very many Members of Congress that wouldn't. The same thing would apply to certain just private individuals, as well as other purposes, business investments and what-have-you. That's what concerns me.

Thank you very much, Mr. Chairman.

Mr. EDWARDS. Without objection, both statements will be made a part of the record in full, and I recognize the distinguished Director of the FBI, Judge William H. Webster.

[The complete statements follow:]

STATEMENT OF PHILIP B. HEYMANN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman and members of the subcommittee, I am pleased to be here today to discuss the role of undercover operations in federal law enforcement. I would first like to discuss why undercover techniques are so important to effective enforcement, and then to describe the legal and policy safeguards which we believe set an appropriate role for use of the technique.

1. THE UNDERCOVER TECHNIQUE IS A LONG-ESTABLISHED AND CRUCIAL LAW ENFORCEMENT METHOD

The term "undercover operations" embraces a wide variety of investigative techniques which can successfully ferret out and deter a broad range of significant crimes. Undercover operations span a gamut which may include: a police officer posing as an old woman vulnerable to mugging or more severe physical attacks in a park; agents infiltrating a drug-smuggling conspiracy intent on making controlled narcotics buys from large-scale dealers; a modest business front, such as a local tavern, susceptible to extortion by local organized crime elements or official inspectors seeking graft; or an elaborate, posh enterprise designed to recover expensive stolen art, jewelry and other valuables. Such an operation may include only a single agent or a single cooperating citizen or informant or it may involve many agents, the use of video and oral tape recordings, judicially-authorized wiretaps, cooperation by several private individuals or businesses, and a number of overt investigative techniques.

Undercover operations have been and will continue to be effective in capturing and convicting those engaged in both violent and economic crimes, including narcotics trafficking, terrorism, labor racketeering, truck hijacking, arson-for-profit, and white collar frauds, as well as political corruption. Judge Webster has noted some of the Bureau's most recent successful operations in these areas. Other federal investigative agencies such as the Drug Enforcement Administration, the Department of Agriculture, and the Bureau of Alcohol, Tobacco and Firearms, as well as local police forces also utilize undercover operations.

Judge Webster has mentioned the investigative advantages which undercover operations provide. In essence, they allow the investigators to pierce the carefully constructed walls of secrecy and layers of insulation behind which the most sophisticated and potentially dangerous criminals work. They permit investigators to discern types of "consensual" crime which generally go unreported and in which the victim is the public at large. If a night club owner bribes a local inspector to overlook fire code violations, in order to avoid more expensive repairs, neither

party is likely to report the criminal transaction. Without undercover techniques, the matter may never come to public attention or may come only after a fire has trapped and killed innocent patrons of the club. As one writer puts it, consensual crimes generally "do not announce themselves."

From the prosecutor's perspective, undercover operations are extremely effective in aiding us to identify, prosecute and convict the guilty and to reduce the chances that innocent parties will be caught up in the criminal process. Undercover operations permit us to prove our cases with direct, as opposed to circumstantial, evidence. Instead of having to rely on inferences from facts developed after the commission of a crime, we can rely on testimony from those who were direct observers before, during and after the attempted commission of a crime. Nor are we limited to the testimony of unsavory criminals and confidence men, whose credibility may be questionable and, in any event, can often be destroyed on cross-examination by able defense counsel. Instead, through undercover techniques, we can muster the testimony of credible law enforcement agents, often augmented by unimpeachable video and oral tapes which graphically reveal the defendant's image and voice engaged in the commission of crime. These techniques aid the truth-finding process by generally avoiding issues of mistaken identity or perjurious efforts by a witness to implicate an innocent person. With the aid of the direct perceptions of government agents and indisputable tapes, we are able to determine whom to indict and whom we should not charge. Similarly, a jury is aided in determining whether the charges have been adequately proven.

Recording the interplay of government agents and unsuspecting, putative defendants is also of considerable assistance to the courts. In many cases where a defendant seeks dismissal of an indictment or suppression of evidence on the ground of governmental misconduct, the court is forced to make difficult comparisons of credibility and accuracy of recollection between government witnesses and the defendant. But when the challenged law enforcement conduct is largely recorded, the court is in a superior position to determine whether the charges of impropriety are justified.

Not only do undercover techniques enhance our ability to investigate and prosecute crimes, but they also serve as a powerful deterrent against the commission of future crimes. Operation Lobster, which the Bureau conducted in conjunction with local law enforcement agencies under the supervision of the Justice Department's New England Organized Crime Strike Force, was an effort to combat truck hijackings plaguing the Northeast Corridor at a rate as high as two to three per day. The operation involved having a Bureau undercover operative pose as a broker of stolen bulk merchandise and run a warehouse where the hijackers could bring their trucks and fence their stolen goods. Video tape and sound recordings were used to monitor and record all business dealings at the warehouse. After approximately 22 months, the investigators believed they had identified all of the major hijackers and proceeded to arrest all those who had fenced stolen loads with us. As a result, we convicted 50 individuals and recovered $3 million in stolen property. But perhaps even more impressive is the fact that after the arrests were made last March, there was only one reported hijacking in the next six months. While the surcease stemmed in part from the fact that many of the major hijackers are now imprisoned, it is also true that hijackers have been made uncertain whether the fences needed to make their crimes profitable are genuine. They must worry that the fences may be in fact federal lawmen who will at some future date arrest and prosecute them.

The same deterrent value is achieved whenever criminal actors are given reason to fear that the person buying heroin, the businessman being extorted or the persons offering bribes may turn out in fact to be undercover government agents. The resulting risks and uncertainties will lead some to refrain entirely from the contemplated crime and others to be considerably slower and more cautious in dealing with strangers essential to the successful consummation of the criminal endeavor.

2. THE LEGAL REQUIREMENTS FOR UNDERCOVER INVESTIGATIONS ARE WELL-ESTABLISHED

Recognizing the strong societal interest in undercover investigations, the federal courts have repeatedly sanctioned use of the technique. For example, in *United States* v. *Russell*, 411 U.S. 423 (1973), the Supreme Court upheld a conviction for manufacturing illicit drugs even though the defendant had been supplied essential chemicals by undercover federal agents. The Court specifically rejected the defendant's claim that the Government was too deeply involved in creating the criminal

activity for which the defendant was convicted. Quoting *Sorrells* v. *United States*, 287 U.S. 435, 441, decided a half century earlier, the *Russell* Court noted: " 'that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution.' * * * Nor will the mere fact of deceit defeat a prosecution, * * * for there are circumstances where the use of deceit is the only practicable law enforcement technique available." 423 U.S. at 435.

This was what the *Sorrells* Court had recognised as well: "Artifice and stratagem may be employed to catch those engaged in criminal enterprises. * * * The appropriate object of this permitted activity, frequently essential to the enforcement of the law, is to reveal the criminal design; to expose the illicit traffic, the prohibited publication, the fraudulent use of the mails, the illegal conspiracy, or other offenses, and thus to disclose would-be violators." 287 U.S. at 441–442.

In its most recent decision in the area of undercover operations, *Hampton* v. *United States*, 425 U.S. 484 (1976), the Court upheld the validity of an undercover investigation in which, according to the defendant, the Government had sold contraband heroin to the defendant through an informant, bought it back from him through undercover agents and then convicted him for the sale. In the decisive concurring opinion, joined by Mr. Justice Blackmum, Mr. Justice Powell wrote that the practical law enforcement problems posed by narcotics trafficking justified a flexible response in detecting would-be violators, even by supplying a contraband substance.

For the most part, in determining the propriety of undercover operations, the courts have focused on the issue of entrapment. Under this doctrine, the key test is whether the Government implanted the criminal idea in the mind of an otherwise innocent individual and induced him to commit acts he was not predisposed to commit. In entrapment, the focus is not so much on governmental conduct as on the mental state and prior behavior of the defendant caught in a criminal deed. As Chief Justice Warren stated in *Sherman* v. *United States*, 356 U.S. 369, 372 (1958):

"To determine whether entrapment has been established, a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal."

The decisions of the Supreme Court suggest that if governmental conduct in an undercover operation reaches "a demonstrable level of outrageousness," such conduct could bar a conviction on due process grounds, even where the defense of entrapment is not technically available. But to date, the Supreme Court has noted that neither supplying essential materials for a criminal enterprise, nor supplying the very contraband whose sale was later punished, amounts to any such overreaching. As Mr. Justice Powell stated in *Hampton*, "The cases, if any, in which proof of predisposition is not dispositive will be rare." 425 U.S. at 495 n. 7. Neither the Supreme Court nor other federal courts have established general operational criteria for undercover operations. The courts have not required that there be any threshold showing of probable cause or reason to believe that a specific crime has been or will be committed or that a particular individual is involved before an operation can be commenced. Nor have the courts imposed any rigid rules on investigative agents with respect to their behavior in establishing and running an undercover operation.

Thus, under current case law, undercover operations will be sustained if they are not so outrageous as to offend the conscience and if they do not trap the unwary innocent.

3. THE DEPARTMENT HAS ADOPTED ADDITIONAL SAFEGUARDS AS A MATTER OF POLICY

As a matter of sound administrative policy, the Department observes considerably more restraints than the bare legal requirements in establishing, monitoring and executing its undercover operations. In the elaborate review process which Judge Webster has described, the Bureau and the Criminal Division strive to insure that each undercover operation is carried out in a manner which is fair, unambiguous, productive of successful prosecutions, and which minimizes the impact on or even the involvement with innocent persons.

As a first safeguard, we only initiate investigations, and we only use the undercover technique, when we reasonably suspect that criminal activity of a given type or pattern is occurring or is likely to occur. If we open a store-front fencing operation, we do so based on reasonable indications that the theft and sale of stolen property is taking place in the area and could be effectively detected and

prosecuted through use of the technique. When a courageous FBI agent named Walter Orrell was sent on a detail to the Bronx in 1976 to pose as the operator of a new garbage collection business and to seek out customers, it was done based on an urgent suspicion that extortionate practices were occurring in the refuse collection industry. That suspicion was confirmed when the part-owner of a rival company came into Mr. Orrell's office and threatened to pitch Mr. Orrell out the window unless he stopped competing, a threat which was tape-recorded and helped convict the extorter.

We impose on ourselves the requirement that there be a well-founded suspicion of criminal activity in a sector or area before commencing an undercover operation, not only because fishing expeditions may be unfair but also for the practical reason that they would be wasteful of our scarce investigative resources. We are simply not in a position to commit precious manhours and resources to an elaborate undercover operation unless we are fairly confident that in the end we will be able to apprehend and convict those engaged in significant criminal conduct.

We do not impose on ourselves any rigid requirement that we know the particular individuals involved in the pattern of criminal conduct before we begin use of the undercover technique. Sometimes we will know the likely identity of a violator before undercover work isused. If a businessman comes to us and says that he has been offered stolen goods or that a licensing inspector has asked for a gratuity, we can use the undercover technique by having the citizen complete the transaction under surveillance. But in the real world, it is hard to intercept many ongoing criminal transactions in that fashion because, as noted, many serious crimes are consensual (such as drug trafficking, loan-sharking, and instances of official corruption), because the victim is afraid to come forward, or because the victim may not even realize he has been injured (such as a company shareholder whose company officers take kickbacks, or a union member whose funds has been embezzled). Even when the identities of particular persons involved in criminal activity are known, they will often only be intermediaries or lower echelon participants.

Effective use of the undercover technique instead often requires that the violator take steps to identify himself during the undercover operation. When we set up a store-front or warehouse operation, sellers we never even knew were in the business have come forward with stolen goods. When we put word out on the street that we will fence stolen truck cargo or stolen government food stamps, the thieves announce themselves and their livelihood by walking in the door. This self-identification can also occur through the intervention of criminal brokers or intermediaries, who gain a living by functioning as catalysts to illegal deals between prospective buyers or illicit goods and services and sellers looking for an additional outlet. One example of such match-making occured in an investigation in Pontiac, Michigan several years ago, where an undercover agent posed as an individual interested in starting a numbers operation. He soon was approched by a local union official who said that police protection would be required for the operation and who thereafter brought several interested police officers to see the undercover agent. Until that approach, we had not focused the investigation on official corruption nor suspected the particular police officials who were later convicted.

In some areas of law enforcement, it may be harder to structure an operation so that those with corrupt intentions take the initiative in coming forward, whether in person or through the agency of a broker. Where operators in a criminal sector are sophisticated and wary such as drug bankrollers who wait for drug importers to come to them for financing, undercover agents may have to make the first move and approach such possible financiers directly or through a broker. In cases where we do not know the identities of the violators in a perceived pattern of criminal activity and have to make the first move directly or through a broker, or where we are met by the representations of an initiating agent of uncertain reliability, we seek to take every possible precaution against involvement of the innocent.

Such precautions involve a careful evaluation of anything we are told by intermediaries about the possible interest of other persons in a criminal transaction, and an attempt to check such claims to the extent practicable. Most important, however, is the second major safeguard followed in every undercover operation, of making clear and unambiguous to all concerned the illegal nature of any opportunity used as a decoy. This provides the strongest possible protection against any unwitting involvement by individuals brought in by intermediaries or who are encountered directly. We attempt to structure our undercover decoy trans-

actions by requiring overt participation on the part of all individuals. If a middleman offers to provide police protection for an undercover numbers parlor, we would seek a face-to-face encounter with the allegedly corrupt policeman at which the illegal nature of the quid-pro-quo would be made utterly clear. This precaution not only elicits the strongest possible evidence of the knowledge and involvement of principal offenders who usually insulate themselves through middlemen, but also provides an important protection against any attempt by a middleman to use the name of an innocent person and against any inadvertent involvement by persons located on the outskirts of an undercover operation. By making clear and unambiguous the corrupt nature of any offer we make, the chance of unwitting or gullible involvement by innocent individuals is strongly guarded against.

A third important safeguard in undercover operations is our modeling of the enterprise on the real world as closely as we can. The opportunities for illegal activity created in the course of an undercover operation should be only about as attractive as those which occur in ordinary life—because the object of a decoy undercover operation is to apprehend only those criminal actors who are likely to have committed or to commit similar criminal conduct on other occasions. Offering too high a price for stolen goods in a fencing operation, or pressing a licensing inspector too vigorously to "work something out" about a licensing violation are inducements we would avoid for fairness reasons. Fairness and practicality have an important coincidence here since overweening inducements or too attractive rewards are also likely to be not believable, potentially alerting criminal actors that something is amiss including the possibility of government involvement.

In view of these safeguards and restrictions in carrying out undercover operations, we believe that most of the concerns raised by recent commentators about undercover operations are easily answered.

Some commentators have suggested that undercover operations are improper when they "create crime." This objection is probably not meant in a literal sense, since whenever a local policeman walks through a park that night dressed as an elderly lady, in order to serve as a decoy victim for muggers, there is a risk that a "new crime" will be created. When we organized our Bronx garbage collection company as a decoy victim for extortion, again we were making likely the commission of an additional act of criminal extortion.

Rather the objection probably goes to the sense that law enforcement activity should never tempt into criminality persons who otherwise would have led law-abiding lives. The important safeguard observed in our undercover operations of modeling the operation on real-world situations—of making sure that any created illicit opportunities, rewards, and inducements are proportionate to the real-world illicit opportunities, rewards, and inducements an individual would be exposed to—meets the nub of the issue of "creating crime." For by this safeguard, we assure that the only individuals who take part in a decoy transaction are individuals who are likely to have engaged in similar criminal conduct on previous occasions or to have committed such crimes on future occasions. By observing this principle of proportionality—modeling the real-world—we avoid creating criminals out of law-abiding persons, and that is the most important part of the argument about "creating crime."

The other intuition underlying the "creating crime" argument is the strong sense that law enforcement activity, including undercover operations, should avoid harming or burdening third parties. Certainly any undercover activity which posed a direct threat to the safety or well-being of third parties would be exceedingly troubling. We are sensitive to this concern and are extremely careful to monitor our operations to prevent third party harm. We commonly close the operation if there appears to ba any significant chance of violent activity or severe uncoverable financial loss to individuals.

Another argument made by some commentators is that undercover operations are proper only when the decoy opportunity or solicitation attracts solely those perons guilty of a prior crime. The example usually given is that of a property sting, in which the bogus fence will presumably attract only those people who have engaged in the crimes of theft or receiving stolen goods. Again, I don't think the argument is intended to be taken literally, since a policeman dressed as an elderly lady has no way of knowing whether the mugger he apprehends engaged in any prior crime before the attempted assault, and yet such decoy operations are generally accepted, just as we may not know for sure in making an agreement to buy narcotics from a street peddler whether he already possesses the narcotics.

One might also note in passing that the intuition as to property fencing is not a perfect one; an individual may well condition his commission of a theft on the knowledge there is usable fence nearby and hence those attracted by a fence are not be definiton criminals prior to their interactions with the fence.

But the concern underlying the "prior crime" argument is again an important one, and is similar to the "creating crime" argument. We don't wish law enforcement activity of any sort to turn law-abiding people into new criminals. The attraction of a "prior crime" population to a bogus property fence seems consistent with this precept. But the concern is also met by our safeguard policies of keeping all decoy opportunities proportionate to those that exist in the real world and by making sure that the illegal nature of the opportunity is clear and unambiguous. These safeguards assure that the only individuals who take part in decoy transactions are individuals likely to have engaged in similar conduct on other occasions.

The same ethical intuition probably moves those commentators who have argued that a factual predicate of probable cause concerning an individual's involvement in criminal activity should precede any use of undercover techiniques. For the reasons explained above concerning the difficulties in detecting and identifying the parties to consensual crimes, we do not believe that a probable cause standard as to individual involvement is remotely practicable—not to mention that probable cause is the articulated standard for arrest and indictment rather than the beginning of an investigation. But the intuition underlying the "probable cause" argument—that the government should not make new criminals out of law-abiding persons nor test people at will with temptations not otherwise occurring in their lives—is again met by our safeguards of having all decoy opportunities and attractions approximate to those existing in the real world and of making clear and unambiguous to all participants in a decoy transaction the corrupt and illegal character of the activity.

4. THE UNDERCOVER TECHNIQUE IS NO MORE INTRUSIVE THAN OTHER INVESTIGATIVE TECHNIQUES

Although undercover projects are designed to pierce deeply into criminal enterprises, the operations are no more intrusive of the interests protected by the Bill of Rights than are other available law enforcement techniques. Compare, for example, a situation in which an individual voluntarily drives a truckload of stolen goods to fence at a videotaped undercover warehouse, with any of the following law enforcement methods: a search under judicial warrant of a home or business which is carried out against the will of the owner; grand jury or trial testimony compelled against friends and associates or even relatives; self-increminating testimony compelled from an individual after being granted use immunity by a court; a grand jury subpoena for voluminous documents, physical evidence or books and records which may concern an individual's private life; or court-authorized electronic interceptions of private conversations or telephone calls when neither party has consented to the interception. In comparison with these Constitutionally and Congressionally authorized techniques, undercover operations represent no greater intrusion into the zone of interests protected by the Fourth, Fifth, and Sixth Amendments of the Constitution.

The essence of the undercover technique is to make use of a subject's willingness to provide information and evidence voluntarily and intentionally to those who he thinks are his criminal confederates. It is the voluntary provision of information to a confederate who, even if a private person, could well be expected to reveal the information on some future occasion, see *United States* v. *White*, 401 U.S. 745 (1971), which makes this technique relatively unobtrusive. In addition, the ability of undercover agents to focus the investigation on the precise criminal conduct in question substantially limits the information gathered to that necessary to complete the investigation. The intelligent use of underocver techniques in an investigation can often produce sufficient evidence to prove a criminal case without forcing the Government to use intrusive investigative methods such as search warrants and court-authorized wiretaps.

The quality of evidence obtained by undercover operations adds substantially to the due process of criminal trials. Often video-taped and recorded, the crimes can be essentially recreated before the jury. Convictions are not centered on the testimony of informants or on the powers of memory of untrained witnesses. The certitude of the evidence improves the confidence of the public in the accuracy and fairness of the judicial process.

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As noted, the one significant danger of undercover operation is the risk of bringing into the government-monitored criminal activities people who would not otherwise engage in similar activities. As the Director and I have explained, we strive to minimize these risks during the planning and execution of the operation. The Department will not authorize the prosecution of any individual unless we confidently believe that he committed the criminal acts without undue solicitation or is predisposed.

Finally, the defense of entrapment is always available to a defendant at trial where a jury can determine from all of the evidence, including perhaps videotapes of the defendant's conduct, whether in Chief Justice Warren's words, the defendant was "an unwary innocent"or "an unwary criminal."

5. UNDERCOVER INVESTIGATIONS OF POLITICAL FIGURES, WHILE POSING SPECIAL PROBLEMS, SHOULD NOT BE SUBJECT TO DIFFERENT RULES

Lastly, I would like to address the special and delicate problems posed for law enforcement in undercover investigations of public corruption. We are sensitive to the potential for abuse when there is an intrusion by the federal executive branch into the affairs of a co-equal branch of government, whether it be the legislature or the judiciary, as well as into the affairs of a state or local government. It would be intolerable if investigations were motivated by partisan or political considerations or if investigations intruded in any meaningful way in the lawful functioning of any branch of government. These concerns mean that law enforcement officials must act with scrupulous fairness, apolitically and cautiously, in carrying out their investigations.

But these concerns do not mean that we can or should abandon our responsibility to investigate and prosecute public corruption. Whether at the local, state or federal level and whether in the executive, legislative or judicial branches, public integrity has been and shall remain a high priority enforcement area of the Department of Justice.

The reasons for this are simple and compelling. In order for the public to have the necessary trust in its government, it is essential that corrupt misuse of public office and authority be effectively prosecuted. Unhealthy disrespect for law is generated when there is a perception of a dual standard, strict enforcement for ordinary people and lackadaisical attitudes or worse for the powerful or prominent. Further, our investigation of sophisticated organized crime, narcotics trafficking, and white collar fraud schemes reveals that official corruption is often indispensable to the success of these criminal ventures. Some investigations in these criminal areas may lead us to evidence or at least allegations of serious public corruption. Whenever the trail of an investigation leads to significant allegations of public corruption, we must and will follow the evidence, no matter where and to whom it may lead.

Often the only effective technique to investigate public corruption will be undercover projects. Because of the consensual nature of bribe transactions and other forms of corruption, it will often be very hard to gain evidence of the transaction, whether the transaction concerns the local police or Chicago electrical inspectors. Even if one of the consensual parties does report the matter, when the public official is a prominent, respected individual, reliance on the testimony of a disreputable briber or an unsavory middleman will frequently be unsatisfactory as proof. The testimony of a credible government agent, or a consensual recording or videotape of a transaction is far more probative and credible evidence.

In public integrity cases involving Congressmen, the recent Supreme Court decision in *United States* v. *Helstoski*, 99 S. Ct. 2432 (1979) has only compounded the difficulties of proving a corrupt transaction in the absence of undercover techniques. The usual way we would prove an allegation of bribery, outside a Congressional context, is to show that money was transferred more or less contemporaneously with the performance of an official act for which the money was promised. But *Helstoski* holds that under the Speech or Debate Clause references to an already performed legislative act by a member of Congress cannot be introduced in the government's case even in a prosecution for bribery. As the Supreme Court acknowledged, "without doubt the exclusion of such evidence will make prosecutions more difficult." 99 S. Ct. at 2439. In regard to past acts of illegal bribery, that prediction of difficulty is certainly true. For although we can prove that money passed (the quid), *Helstoski* prevents introducing evidence of the official act (the quo).

The only route of proof left open by *Helstoski* is testimony by a bribe-payer about the promise allegedly made by the Congressman. As noted above, an

avowedly corrupt bribe-payer will not enjoy much credibility as a witness. Hence, the use of the undercover technique, making possible testimony from more credible law enforcement agents and evidence collected by consensual surveillance, will take on central importance in any future investigation of alleged criminal abuse of office by a member of the Congress.

The safeguards and techniques which are employed in our undercover operations generally are and shall be utilized in investigations aimed at public corruption. After the careful internal review procedures are satisfied, we will initiate an undercover investigation only where we have a well-founded reason to believe that there is a pattern of criminality. There are only two ways in which any public official will become the subject of an undercover investigation: if he is the object of reliable, specific criminal allegations for which an undercover operation is an appropriate method of investigation; or if, by a process of self-selection, he voluntarily enters an operation. Just as we do not know which individuals will enter our undercover warehouse with a truckload of stolen merchandise, so we do not always know or even suspect which municipal building inspector will show up in our undercover bar to solicit a corrupt payment in return for a license. As in all undercover operations, any decoy transaction in a public integrity case should be structured so that its corrupt character is as clear and unambiguous as possible and should be modeled and proportioned as closely as feasible on the pattern of criminality we understand to exist in the community. We must be fully satisfied that the public official is soliciting and willing to accept an illegal payment in return for dispensing a political favor. If it appears that the individual lacks such intent and has entered the operation on an innocent misunderstanding, perhaps generated by the misrepresentations of a deceitful non-governmental middleman, we would not pursue the individual as a target of the investigation.

On the other hand, if we are satisfied of the individual's criminal intent, then we cannot and will not shirk our responsibility to continue the investigation and to prosecute, if warranted, regardless of how prominent or powerful the official may be. In essence, the same protections which preclude or minimize the possibility that innocent people will be caught up in any type of undercover operation are also used to prevent an honest public official from being implicated in any undercover operation directed against public corruption. There is no valid reason for any standards or procedures in political undercover operations different from those employed in any other types of undercover investigations.

CONCLUSION

The undercover technique has been used successfully in labor racketeering, white-collar crime, narcotics trafficking, political corruption, and many other kinds of significant crime. We believe that as administered by the Department, in conformity with the legal and cover policy restraints I have described today, undercover techniques represent a minimally intrusive, powerfully effective weapon to detect, combat and deter the most serious forms of crime in our society.

STATEMENT OF DIRECTOR WILLIAM H. WEBSTER, FEDERAL BUREAU OF INVESTIGATION

It's a pleasure to appear before you today to discuss the FBI's undercover activities.

The FBI makes use of the undercover technique in important cases where more conventional investigative techniques give little promise of success. The technique allows us to reach beyond the street to the manipulators, organized crime leaders, and others too guarded or insulated to be observed in criminal activity in public. A brief look at past undercover cases illustrates just how effective its use can be.

Our UNIRAC investigation, standing for Union Racketeering, was aimed at corruption in the Longshoremen's Union in several Atlantic and Gulf Coast ports. The principal violations here included racketeering and extortion: payoffs by shippers and warehousemen to union officials. It was a mutual arrangement and one that had been in existence for some time. Direct investigation of the suspects probably would have resulted in an attempt to cover up existing evidence. However, with the help of a source and undercover Agents in Miami, we were able to get hard evidence—tape recorded conversations of actual illegal transactions. Ultimately, this case led to the indictment of 120 persons. Sixty-nine of these

individuals, including many union officials and business executives (and among these, most recently, Anthony Scotto) have been convicted, and many others await trial. These activities impacted on millions of Americans who have been paying inflated prices on a multitude of items passing over the docks.

In another undercover case, a Weather Underground investigation, the stakes were different. We were dealing with a small insular cell of individuals committed to violent revolutionary acts. Two of our Agents were able to infiltrate the organization and remained members for four years. As a result, they were able to warn us of the organization's plan to bomb the office of a California State Senator. We made arrests shortly before the group put its plan into operation and effectively prevented the violence from occurring.

In another undercover operation entitled MODSOUN, we targeted the manumanufacturers and distributors of "pirated" tapes, records, and labels along with organized crime figures with ties to the recording industry in New York City. Working out of a store front export business operating at the retail sales level, the FBI was able to seize $100 million of counterfeit tapes and recording equipment at 19 different locations in five East Coast states. To date, four subjects have pled quilty, two others have been indicted, and additional indictments are anticipated.

Other examples of undercover operations include the original anti-fencing Sting operation in Washington a few years ago; another anti-fencing operation in Buffalo, New York, that led to the recovery of a stolen Rembrandt a joint FBI and ATF operation targeted against an arson-for-profit ring which utilized the RICO statute, eventually resulting in stiff sentences to 14 individuals, $273,000 in finds, and the forfeiture of over $450,000 in property; and one very important recent case. We named the case MIPORN to refer to an undercover investigation into the pornography industry in Miami and its ties to organized crime. That investigation began in August of 1977. It involved two undercover Agents who spent two and one-half years working their way into the confidences of allegedly some of the nation's major pornography business figures. Forty-five persons were indicted as a result of that investigation. The same case yielded indictments against another thirteen persons on film pirating charges.

I've given these examples to show the scale and character of criminal investigations to which we are applying the undercover technique. As I indicated, undercover operations are often used to reach those serious violations that otherwise may go undiscovered and unprosecuted. That is particularly true where we are dealing with consensual crimes. Not long ago, we completed an undercover investigation that led to the conviction of eleven individuals involved in a kickback scheme. Smaller firms that sold materials to a large shipbuilding company were paying off the larger company in order to keep its business. Without the use of the undercover technique, the FBI could not have gotten inside to get persuasive evidence of these transactions. As a matter of fact, twice previoulsy we had unsuccessfully attempted to investigate this scheme using conventional investigative techniques.

Undercover operations are effective. In Fiscal Year 1979, for example, undercover operations led to actual recoveries worth over $190 million. In addition, we estimate that almost $1.5 billion worth of potential economic losses were prevented. Arrests arising from these type operations in that fiscal year totalled 1,648 with 1,326 convictions. Our funding for undercover operations during Fiscal Year 1979 was $3 million, about one-half of one percent of our total budget. For Fiscal 1980, our funding was $3 million while our request for Fiscal Year 1981 is $4.8 million, about three-fourths of one percent of the total budget. This increased request for Fiscal Year 1981 is being made in order to continue our operations without being forced to prematurely terminate some operations because of lack of appropriated funding. Last year, 15 operations were terminated for this reason.

These operations, however, often raise sensitive issues which I recognize must be addressed. Therefore, the FBI has adopted specific undercover policies, and an extensive oversight machinery to insure that each undercover operation is carefully planned and conducted.

When an undercover project is proposed by a squad in one of our field offices, our field office managers, the field legal advisor, and the Strike Force or United States Attorney in that region review it and send their reports to Headquarters. We consider the project's goals, the worthiness of its objectives, its costs, whether the tactics proposed might involve entrapment or present other legal problems, and the general propriety of proposed project tactics.

Many projects are rejected either by field or FBI Headquarters managers. Those that survive are submitted to an Undercover Activity Review Committeee at Headquarters. This committee, comprised of representatives of our Criminal Investigative, Legal Counsel, Administrative, and Technical Services Divisions and of representatives of the Department of Justice, reconsiders the same issues before reaching a decision.

Many difficult questions come before this committee. One proposed operation presented a scenario in which the undercover Agent would pose as a "heavy" or "muscle." The committee considered the possibility that the Agent in this role might be encouraged to commit violent acts. The risks were weighed; the committee believed that violence could be avoided by taking certain steps if the possibility of violence arose. The committee approved the operation on the condition that the undercover Agent be instructed not to participate in any violent acts and that FBI Headquarters be advised of any potentially violent situations. In a second case, the field office proposed to use certain fraudulent documents as part of a proposed cover. The committee determined, however, that the risk that undercover Agents could lose control of the documents and that they might be used by someone who secured access to them to the detriment of an innocent third party was too great. The field office was directed to develop a different approach. In recognition of this particular problem area, a policy has now been adopted requiring that the use of all such documents must be approved by Headquarters.

In addition to this approval review process, special care is taken to ensure that our Agents are sensitive to the limitations and requirements of undercover work. Before an operation is undertaken, FBI supervisors, the Special Agents in Charge in the field, and program managers at FBI Headquarters carefully screen all undercover Agents to be certain that they are suited for their particular missions. We also provide special training for those selected, with emphasis on instruction in legal areas, including the issue of entrapment.

We take precautions to minimize potential problems. With adequate training, the Agents involved are alert to sensitive issue areas. We want them to recognize when lines are about to be crossed, and to know that when in doubt they must seek the advice of their supervisors.

Once the review committee approves a project, the Bureau monitors it, both at Headquarters and in the field. When electronic surveillance or closed circuit videotapes are used, we can examine the propriety of our Agents' conduct, and the quality of the investigation as it progresses. And, of course, the results of the surveillance and the tapes provide an opportunity for the courts to evaluate the Agents' actions should they subsequently be challenged.

Perhaps it is also appropriate to note at this point that the proposed FBI Domestic Charter contemplates the promulgation of guidelines for undercover operations. We are currently working with the Department of Justice on these guidelines and substantial progress has been made.

In the last few weeks, a number of concerns about undercover operations have been raised. When aimed at property crimes or crimes of violence associated with organized crime elements or terrorist groups, for example, few serious questions have been raised about the use of the undercover technique. There has been almost unanimous approval in cases where it has been used to recover stolen property, to identify persons who have committed known crimes of to prevent the commission of planned criminal activities. In fact, Congress itself has recognized the value of this technique by expressly providing for exemptions from certain statutory requirements through a certification process.

In cases involving consensual crime, however, particularly when public officials are involved, we recognize the need for special precautions. The inve tigation of wrongdoing on the part of a public official is a particularly serious undertaking. Our people are sensitive to the fact that reputations of public officials are delicate and even the hint of an investigation can be harmful.

Sometimes a project may initially target one type of criminal activity only to lead us into another equally as serious. When that occurs, even if it involves government corruption, the operation, after appropriate review and examination, expands its focus. If we were not to follow these leads, we could justifiably be open criticism for not doing our job.

We start our undercover investigations focused on criminality, not against individuals or institutions. By creating a setting in which those who are predisposed to criminal activity find it convenient to deal, we may develop new leads. The same basic criminal standard always applies. Before allowing an investigation to expand, the Undercover Activity Review Committee must be satisfied that

there is a sound basis for doing so. Therefore, it will again weigh all of the factors it would consider when presented with any new proposal.

We are also aware of the problems inherent in operations where our undercover Agents are investigating subjects who are influence peddlers or middlemen claiming to know others already willing to engage in criminal activity. Since these middlemen do not know they are dealing with the FBI, or that they are the subjects of investigation, it is difficult for us to monitor their activities, and, of course, they are not under our control. We must, therefore, carefully evaluate any information they provide to us as to the willingness of a third party to engage in a crime before we proceed further and assure that if such a third party does meet with us he is aware of the criminal nature of the meeting.

The recent unauthorized disclosures to the press on some of our undercover operations are deplorable. These leaks are unfair to the subjects of the investigation whether or not indictments are eventually returned. They are also detrimental to the mission of the FBI and the Department of Justice. Leaks force the premature abandoning of investigations; they tend to undermine strong cases. They may also be dangerous to those conducting investigations.

The FBI and the Department are vigorously investigating these leaks to determine the parties responsible. If, among the many government employees who had access to this sensitive information, we find that any of our employees is involved, he can expect to be severally disciplined at the least.

In summary, we must use the undercover technique with discretion and care. Whether it be the undercover technique or another technique, in every investigative venture there are potential risks. As I have indicated, we have developed policies and procedures designed to minimize these risks. This is not to claim investigative perfection. But whenever mistakes, miscalculations or misunderstandings do occur, you may be sure that the lessons learned will be incorporated in our future planning of operations.

Our experience tells us that the use of the undercover investigative technique is vital in combating the two areas of crime that impact most seriously on society—organized crime and white-collar crime. I am confident that the principles I have discussed today, which we follow, will allow us to continue to meet these crime problems in a manner consistent with the expectations of the American public

TESTIMONY OF WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, AND PHILIP B. HEYMANN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. WEBSTER. Thank you, Mr. Chairman.

Thank you very much, Mr. Chairman and Chairman Rodino. It's a pleasure to appear before you today to discuss the FBI's undercover activities.

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To date, four subjects have pled guilty; two others have been indicted; and additional indictments are anticipated.

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In addition, we estimate—and granted, it is an estimate—that almost 1.5 billion dollars' worth of potential economic losses were prevented. Arrests arising from these type operations in that fiscal year totaled 1,648, with 1,326 convictions.

Our funding for undercover operations during fiscal year 1979 was $3 million, about ½ of 1 percent of our total budget.

For fiscal 1980, our funding was also $3 million, while our request for fiscal year 1981 is $4.8 million, about ¾ of 1 percent of the total budget.

This increased request for fiscal year 1981 is being made in order to continue our operations without being forced to prematurely terminate some operations because of lack of appropriated funding. Last year 15 operations were terminated for this reason.

These operations, however, often raise sensitive issues which I recognize must be addressed. Therefore, the FBI has adopted specific undercover policies, and an extensive oversight machinery to insure that each undercover operation is carefully planned and conducted.

When an undercover project is proposed by a squad in one of our field offices, our field office managers, the field legal advisor, and the strike force or U.S. attorney in that region review it and send their reports to headquarters.

We consider the project's goals, the worthiness of its objectives, its costs, whether the tactics proposed might involve entrapment, or present some other legal problems, and the general propriety of proposed project tactics.

Many projects are rejected either by field or FBI headquarters managers. Those that survive are submitted to an Undercover Activity Review Committee at headquarters. This committee, comprised of representatives of our Criminal Investigative, Legal Counsel, Administrative, and Technical Services Divisions, and of three representatives of the Department of Justice, reconsiders the same issues before reaching a decision.

Many difficult questions come before this committee. One proposed operation presented a scenario in which the undercover agent would pose as a heavy or muscle. The committee considered the possibility that the agent in this role might be encouraged to commit violent acts. The risks were weighed; the committee believed that violence could be avoided by taking certain steps if the possibility of violence arose.

The committee approved the operation on the condition that the undercover agent be instructed not to participate in any violent acts, and that FBI headquarters be advised of any potentially violent situations.

In a second case, the field office proposed to use certain fraudulent documents as part of a proposed cover.

The committee determined, however, that the risk that undercover agents could lose control of the documents in that situation and that they might be used by someone who secured access to them to the detriment of an innocent third party was too great.

The field office was directed to develop a different approach. In recognition of this particular problem area, a policy has now been adopted requiring that the use of all such documents must be approved by headquarters.

In addition to this approval review process, special care is taken to insure that our agents are sensitive to the limitations and requirements of undercover work. Before an operation is undertaken, FBI supervisors, the Special Agents in Charge in the field, and program managers at FBI headquarters carefully screen all undercover agents to be certain that they are suited for their particular missions.

We also provide special training for those selected, with emphasis on instruction in legal areas, including the issue of entrapment.

We take precautions to minimize potential problems. With adequate training, the agents involved are alert to sensitive issue areas. We want them to recognize when lines are about to be crossed, and to know that when in doubt, they must seek the advice of their supervisors.

Once the review committee approves a project, the Bureau monitors it, both at headquarters and in the field. When electronic surveillance or closed circuit videotapes are used, we can examine the propriety of our agents' conduct, and the quality of the investigation as it progresses.

And, of course, the results of the surveillance and the tapes provide an opportunity for the courts to evaluate the agents' actions, should they subsequently be challenged.

Perhaps it is also appropriate to note at this point that the proposed FBI Domestic Charter contemplates the promulgation of guildelines for undercover operations. We are currently working with the Department of Justice on these guidelines and very substantial progress has been made.

In the last few weeks, a number of concerns about undercover operations have been raised. When aimed at property crimes or crimes of violence associated with organized crime elements or terrorist groups, for example, few serious questions have been raised about the use of the undercover technique.

There has been almost unanimous approval in cases where it has been used to recover stolen property, in cases where it has been used to identify persons who have committed known crimes or to prevent the commission of planned criminal activities.

In fact, Congress itself has recognized the value of this technique by expressly providing for exemptions from certain statutory requirements through a certification process.

In cases involving consensual crime, however, particularly when public officials are involved, we recognize the need for special precautions. The investigation of wrongdoing on the part of a public official is a particularly serious undertaking. Our people are sensitive to the fact that reputations of public officials are delicate and even the hint of an investigation can be harmful.

Sometimes a project may initially target one type of criminal activity only to lead us into another equally as serious. When that occurs, even if it involves Government corruption, the operation, after appropriate review and examination, expands its focus. If we were not to follow these leads, we could justifiable be open to criticism for not doing our job.

We start our undercover investigations focused on criminality, not against individuals or intitutions. By creating a setting in which those who are predisposed to criminal activity find it convenient to deal, we may develop new leads. The same basic criminal standard always applies.

Before allowing an investigation to expand, the Undercover Activity Review Committee must be satisfied that there is a sound basis for doing so. Therefore, it will again weigh all of the facts it would consider when presented with any new proposal.

We are also aware of the problems inherent in operations where our undercover agents are investigating subjects who are influence peddlers or middlemen claiming to know others already willing to engage in criminal activity.

Since these middlemen do not know they are dealing with the FBI, or that they are the subjects of investigation, it is difficult for us to monitor their activities and, of course, they are not under our control.

We must, therefore, carefully evaluate any information they provide to us as to the willingness of a third party to engage in a crime before we proceed further, and assure that if such a third party does meet with us, he is aware of the criminal nature of the meeting.

Mr. Chairman, the recent unauthorized disclosures to the press on some of our undercover operations are deplorable. These leaks are unfair to the subjects of the investigation, whether or not the indictments are eventually returned.

They are also detrimental to the mission of the FBI and the Department of Justice. Leaks force the premature abandoning of investigations; they tend to undermine strong cases. They may also be dangerous to those conducting the investigations.

The FBI and the Department are vigorously investigating these leaks to determine the persons responsible. If, among the many Government employees who had access to this sensitive information, we find that any of our employees is involved, he can expect to be severely disciplined, at the least.

In summary, we must use the undercover technique with discretion and care. Whether it be the undercover technique or another technique, in every investigative venture, there are potential risks.

As I have indicated, we have developed policies and procedures designed to minimize these risks. This is not to claim investigative perfection, but whenever mistakes or miscalculations or misunderstandings do occur, you may be sure that the lessons learned will be incorporated in our future planning of operations.

Our experience tells us that the use of the undercover investigative technique is vital in combating the other areas of crime that impact most seriously on society—organized crime and white-collar crime.

I am confident that the principles I have discussed today, which we follow, will allow us to continue to meet these crime problems in a manner consistent with the expectations of the American people.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Webster. Mr. Heymann?

Mr. HEYMANN. Mr. Chairman, members of the committee, I will summarize my testimony since it's been introduced in the record, and let me begin by telling you what the outline of it is.

I am first going to pick up just a little bit on Judge Webster's description of the importance and the unique advantages of undercover operations. Then I am going to summarize the law which is fairly clear. Then I am going to talk about three additional protections that we—that means Judge Webster and the Department of Justice—agree as a matter of policy we should have and do have.

Then I am going to talk about how undercover compares with other investigative techniques in terms of the intrusiveness and invasion of civil rights. And finally I am going to ask the question, is there anything special about investigations that go to political figures, either at the local, State, or Federal level.

It sounds like a lot, but I will try to be at least decently brief.

The undercover technique itself is a very old one. I asked my special assistant to tell me what's the oldest use of it that she could find, and she says it goes back at least to the "Odyssey" and the hero of the "Odyssey," appearing undercover to detect crimes in his household when he returns.

It was being used extensively toward the end of the last century. There are cases out there, mail fraud, pornography. It is not only old and familiar, but it is varied.

It takes such forms as a police officer posing as an old woman, vulnerable to mugging or more severe physical attacks in Central Park in New York; as agents infiltrating a drug-smuggling conspiracy, or merely buying drugs on the street of a major city; a modest business front such as a local tavern, susceptible to extortion or payoff requests by the police; a jewelry fencing operation and art fencing operation. It has varied forms. It is old; it is established. It is just another technique of the sort that searches, compelled testimony, interview, scientific detection, electronic surveillance are. It is just another technique. It is dramatic now because it has been raised in scale and the size of the undercover operation by recent activities.

It is not exclusively used by the FBI. Director Webster mentioned operations carried on with the Bureau of Alcohol, Tobacco and Firearms. The Department of Agriculture has done undercover operations of its own. DEA, of course, does them. Senator Moss in the Senate ran his own undercover operation 4 years ago, and went through New York's medicaid clinics disguised as a potential customer, deriving information.

From my point of view, they have three or four major advantages as an investigative technique:

One: They enable us to get, as Judge Webster's examples show, into well-organized and secret, ongoing criminal activities; criminal activities that keep going and have a life of their own.

Second of all: Undercover activities are accurate. They generally involve monitoring with either audio or audio and video equipment. They do not put us in the position of relying on the tips or testimony of what are often highly unreliable informants, con men, somebody else out there. We end up with reliable determinations of what happened.

I am going to argue extensively later that compared to other techniques, they are nonintrusive. They don't do what the fourth amendment allows us to do in terms of invading privacy, or what the fifth amendment allows us to do in compelling cooperation. They are nonintrusive.

Finally: They could have a very spectacular deterrent effect. We quote with pleasure, and maybe with too much regularity, Operation Lobster in the Boston area. In that operation we had a warehouse offering to buy hijacked goods, ran it for a number of months, and then arrested the hijackers. Hijacking has practically stopped in the New England area. It has a substantial deterrent effect.

People who would engage in that activity not only worry about the consequences of being caught in the very moment they are engaging in the activity; they have to worry about whether they are dealing with a Federal or State agent.

Many of these, incidentally, are run with the cooperation and in partnership with State and local law enforcement authorities. Operation Lobster is of that sort.

Let me move second to the law.

The law, of course, is familiar to the members of the committee. We are not free to induce a crime by one who is unwilling or not predisposed. We are free to give an opportunity to commit a crime to one who is willing and ready to take advantage of an opportunity.

The Supreme Court, in recent decisions—the *Russell* case, and the *Hampton* case—have affirmed that the Government, State or Federal, can legally go quite far in providing that opportunity.

The test ultimately is whether we have created a specific occasion of criminal activity or have created a whole new type of activity that would otherwise not have taken place.

In every case where the Government is operating as a decoy victim or participant undercover, in every case that the entrapment issue has ever been raised, the particular crime only takes place because the Government agent is buying drugs or he is in the park there to get mugged. In every case, the particular crime is caused by the Government; the issue, though, is whether the type of crime would have taken place without us.

The courts have not required that there be any threshold showing of probable cause or reason to believe that a specific crime has been or will be committed before we can engage in undercover or participate in consensual activities.

The courts have never required that a particular individual be shown to be involved before an operation can be commenced that brings him in.

The courts have not imposed rigid rules on investigative agencies with respect to their behavior in establishing and running an undercover operation.

The courts, in fact, have been quite lenient and open in recognizing that deceptions and stratagems are necessary for the investigation of particular types of crimes.

The Department has, as a matter of policy, adopted three requirements that the courts do not insist upon. I think—and I know Director Webster thinks—that these three requirements are essential. I think, and the Director thinks, that additional proposed requirements are not sensible or reasonable.

The first requirement, the first safeguard that we have imposed, is that we should only initiate an undercover operation, we should only use the undercover technique when we reasonably suspect that criminal activity of a given type or pattern is occurring or is likely to occur.

Note how that relates to the entrapment defense. The particular type of activity we have to have some reason to believe is taking place out there. That's what plugs us in to the charter, I believe, Mr. Edwards.

If we open a storefront fencing operation, we do so based on some kind of reasonable indication that theft and the sale of stolen property

is taking place in the area, and could be effectively detected and prosecuted through the use of the technique.

When a courageous FBI agent named Walter Orrell was sent on a detail to the Bronx in 1976 to pose as the operator of a new garbage collection business, and to seek out customers, it was done based on an urgent suspicion that extortionate practices were occurring in the refuse collection business.

Sure enough, someone came soon and threatened to beat him up, threatened to throw him out the window. That's the first requirement; that we have a reasonable basis for believing that type of activity is going on, the type of activity the undercover investigation is designed to get at.

We do not impose any rigid requirement that we know the particular individuals involved in the pattern of criminal conduct before we begin use of the undercover technique. This goes to the questions Mr. Seiberling was asking in advance.

Sometimes we can know the individuals who are likely to be involved and check out whether they are involved or not. On other occasions, it plainly makes no sense if we set up a warehouse in Boston to buy hijacked goods, we shouldn't have to know in advance who will come into it and who won't come into it. That shouldn't be necessary, and isn't necessary.

What substitutes, if you think about it hard, for probable cause in that type of situation, what substitutes for knowing who's likely to be sucked into an undercover operation is the fact that the operation is self-selective. People don't come to our warehouse in Boston unless they have selected themselves to take part in that hijacking/fencing scheme.

That requires, however, a second step, which is a second safeguard, and it brings up questions that the chairman has raised.

I am not saying that we have always done each of these things perfectly. I am saying that I think we know what the right direction here is to go.

The second safeguard requirement is that we have to be very clear about what the nature of the illegal transaction is, that we are inviting people to participate in. If people are going to self-select, and if the self-selection is going to be a substitute for knowing anything about them they ought to know what they are self-selecting themselves for.

If it's going to be a corrupt transaction, they ought to know that. If it's going to be a mugging in Central Park, they ought to know that.

One example of self-selection is an investigation we conducted in Pontiac, Mich. several years ago where an undercover agent posed as an individual interested in starting a numbers operation. He soon was approached be a local union official who said that police protection would be required for the operation, and who thereafter brought several interested police officers to see the undercover agent.

Of course, we had no basis for investigating the police before that. Until that approach, we had not focused the investigation on official corruption, or suspected that particular police officials were corrupt.

Still, it was proper when through other contacts they were brought to us.

The third major safeguard—the first is that we know there is some activity out there. The second is that we make our own activities

unequivocal in terms of what we expect the person who might get sucked into the operation to do.

The third is that we make, we model the transaction, the undercover operation, whether it be a mugging in the park or a drug deal or a corruption sting or a hijacking sting, as much as possible after reality, to the best of our ability. That we don't offer inducements or promises or attractiveness that the real world doesn't offer.

That, of course, makes sense, because the crooks won't believe us if we don't model our transactions after reality; but it is also a guarantee of fairness, because it means that anybody who is brought in, is brought in with the same type of temptation that we know is floating out there.

We know that because we will not start an operation unless we have reason to believe that a particular type of activity is going on out there. Then we unequivocally model our activity, our temptations, on the real world.

From there on, it is a combination of self-selection and what we learn about individuals.

Let me move to the last two points very quickly.

INVESTIGATION

I personally believe that the undercover technique compares very favorably in terms of the mandate of this committee with other investigative techniques. In terms of civil liberties and constitutional rights, I think the undercover technique compares favorably not only with electronic surveillance, but with searches, with compelled grand jury testimony, with plea bargaining for evidence, with any of the number of regular investigative techniques we use in the law enforcement business.

Compare, for example, a situation in which an individual voluntarily drives a truckload of stolen goods to a fence at a videotape undercover warehouse—that's how we arranged it in Operation Lobster—with any of the following law enforcement methods:

A search under a judicial warrant of a home or business which is carried out against the will of the owners. Searching the house of people we think are hijackers. Much more intrusive; reaches the family, reaches people who have nothing to do with the crime. Not true when the man drives into our warehouse.

Grand jury or trial testimony compelled against friends and associates, or even relatives, bringing in the best friend of someone we think is a hijacker and requiring that person to testify—girlfriend, boyfriend.

We have a rule that we self-impose that we won't go for immediate family members because it's too harsh. It's legal, but we don't do it. But, friends, yes; girlfriends, boyfriends, yes.

No compulsion, no pressure, no tearing people apart by loyalty, and no putting someone in a position where they have to testify at risk of having their legs broken, for having testified.

Instead, a truckdriver driving a load of goods into a warehouse where his only complaint is that he was deceived into thinking it was a crooked operation, and it's really us.

A grand jury subpena for voluminous documents, physical evidence, or books and records; again compelling people, disrupting their lives.

We have to do it. We do do it. Investigations penetrate secrecy; not necessary when a truckdriver drives into our warehouse.

Court-authorized electronic interceptions of private conversations, intrusions of the sort that we don't have to do with undercover operations.

My point is very simple. I think in terms of civil rights and civil liberties, as well as in terms of effectiveness, undercover is a very desirable form of operation.

I haven't even mentioned the fact that it's nice if you only convict the guilty and don't convict the innocent. A criminal investigation undercover increases the already high probabilities that that is what will result.

Let me close just by saying a word about this, about a question that may lie somewhere in the background. Is there anything different when the investigation goes to public corruption, when it goes into bribery of electrical inspectors, which we have done in Chicago? Or bribery of a State legislator, which was done in Baltimore? Or it goes to a corrupt policeman in Pontiac, Mich? Or to Federal officials, such as an INS official? Or to Members of Congress?

Well, the answer is yes, there is something different, and the answer is no, in the long run, we shouldn't treat them very differently.

It would, of course, be intolerable if investigations were motivated by partisan or political considerations. It would simply be extremely destructive, the most destructive thing you could have of democracy in the country.

That means that every investigation that goes into the political area, State, local, Federal, has to be guaranteed not to be targeting any individual on the basis of his or her voting stance, political party, anything else.

What we do target on, what we can target on, is either prior information, which was true in the Baltimore State legislator case, or self-selection, which was true in the case of the Pontiac, Mich. police officer. Never in terms of whom we want, because we don't want anybody.

As a matter of fact, there is a sense—and I want to mention it, in which Judge Webster and I would sit and breathe a sigh of relief in an investigation when we failed to get somebody. We don't want anybody. We just want to be sure that we don't duck or step back.

At the same time, while we have to be careful that we are not distorting the political process, picking on people for political reasons or engaging in undercover operations that might result in a legislative act, in the changed behavior of a local city council or the State legislature or the Federal Congress, we have to continue to take extremely seriously the problem of public corruption.

It is a high priority with us. There are two reasons for it:

One is the same respect for institutions that we threaten when we bring one of these investigations, when they result in cases, will be far more seriously threatened if all of us didn't make a major effort to make dangerous, unpopular, unwise, any form of public corruption at any level.

The second is many forms of illegal transactions can't take place without at least local or State of Federal administrative public corruption. If we want to stop them, we have to be interested in stopping the corruption, too.

Now, the thing that makes political cases most difficult to conduct, the reason why we have to treat them a little bit differently, is the reputation of elected politicians and maybe of appointed, too, are their lives. It's my life, my reputation; and it's your life, your reputations.

But in any investigation, those reputations are on the line. The reason why we can't deny undercover whenever it goes to a question of public corruption is twofold:

One: That reputations of political figures, elected or appointed, are on the line, whether we use undercover or not. They are on the line whenever we start receiving information from crooks who are often wrong and sometimes right.

The other reason is because there is practically no other way to investigate charges of bribery and bribery is a uniquely political crime. We could not investigate systematic bribery among electrical inspectors in Chicago without going out there and offering bribes.

The reason is quite simple: Bribery takes place in a one-on-one situation, and it generally takes place between a somewhat disreputable briber and a somewhat reputable official, executive or legislative, local, State, or Federal.

We have to be a participant in the transaction, having heard that such transactions were going on, having made our participation as like those transactions as possible, and as unequivocal as possible, if we are going to investigate public corruption.

Thank you for giving me so much time, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Heymann.

We will be operating in the question-and-answer period strictly according to the 5-minute rule.

The Chair recognizes the gentleman from New Jersey, Chairman Rodino.

Chairman RODINO. Thank you very much, Mr. Chairman.

Mr. Webster and Mr. Heymann, I want to commend you for your statements, and I believe that you have given us the kind of information which is going to be useful.

However, I do not believe that in this one hearing we are going to be able to dispose of some of the questions that at least I have, and I'm sure many other members have, which cause us the concerns that I think were very eloquently expressed by Mr. Seiberling.

I might start off by saying that all of us applaud your efforts in attempting to get at white-collar crime, which I think all too frequently has been ignored and has been, I think, one of the greater burdens we have had on society. I think it has gone undetected probably because it hasn't been addressed as it should have been. We applaud your efforts in that area and in the public corruption area particularly because of the indifference of the public to public officials, and the mistrust, and the climate after Watergate. All of us are aware and applaud your efforts in that direction.

Again, though, what does bother me is that there would be carefully crafted guidelines in these areas in order to prevent intrusions into civil liberties. Those of us may differ as to what those civil liberties are, and we may recite Supreme Court cases on how there is latitude, but I think we've got to be very careful here. I think that is fundamental to our democracy.

And, Director, in your statement, and again when you were being interviewed on television by Mr. Carl Rowan, in answer to his statement that he thought that what troubles people is they don't know whether you're going out luring people, you said:

> I don't believe we are luring people. We are creating a setting in which those who are predisposed to criminal activity find it convenient.

Now, you have set out, and Mr. Heymann has set out, some of the requirements in some of the undercover operations. But who decides this predisposition? Is this predisposition not a state of mind? Is this predisposition not something that someone is going to make a determination about? And based on what?

Now you have stated that there are certain requirements, but it still seems to me that we originally talked about criminal conduct and criminal activity, and all I have heard through the arguments has been that there is reasonable grounds to believe that there is this criminal activity. We know that in some of the Sting operations, the crimes are already committed.

Yet in some of the cases that were reported in the newspapers recently involving public officials, there hadn't been any criminal activity. It seems to me that the setting was such as though we were finding out whether some could be lured who might be predisposed.

Now it's pretty difficult for me to accept that, because somebody is making a determination as to what the attitude or what the willingness of a person might be who has never been involved in any corrupt activity. You are relying totally on purveyors or informers who themselves are subject to great question as to whether or not they are reliable.

Now who makes that determination about the predisposition? And can you tell me whether your guidelines are going to be able to deal with this with such care and specificity that you won't be involving innocent people. You are going to be responsible for the leaks, too, because you set the whole thing in motion, and unfortunately damaged reputations of the very people whom you do not want to damage.

In any event, I'd like to know, Mr. Webster, just how you answer that.

Mr. WEBSTER. Chairman Rodino, I have already in my statement expressed my disapproval and my dismay at the leaks. It has not yet been determined who is responsible for them, but certainly there is no institutional responsibility for those leaks in terms of purposeful leaking, and I hope very much that we arrive at an early date at a resolution of that question.

I think it is significant that with the number of long-term investigations that we have underway in our undercover capacity, this is the only instance of a wholesale leaking.

We will try to improve that. We will do the very best we can, but other investigations result in leaks. There isn't anything endemic about undercover operations being leak prone, except that they, like other investigations, frequently extend over a substantial period of time.

Chairman RODINO. But, Director, those leaks show, at least from what I have been able to read, that in some of the undercover operations, the so-called predisposition either did not exist, or what you based it on, I don't know.

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Mr. WEBSTER. Well, you're asking me, and I know we all have agreed, and I have heard the public statements of Congressmen, and you have read mine, we should not be talking about the specifics of the Abscan investigation. That is going through the grand jury process at the present time.

What is in the papers may or may not be correct, or may or may not be complete. I can tell you that it is not complete.

To simply explore the fact situations of certain individuals who were not indicted, without an overall examination of the entire grand jury process and trial process, and the evidence that comes out in the trial, to me would be an abrogation of your oversight responsibilities, and I know you are not going to do that.

Chairman RODINO. Well, I'm not going to do that. I'm not referring to those cases. I'm referring to some cases that were leaked that you yourself, the Department, has stated that these people were not the target or subject of any investigation.

Mr. WEBSTER. In any type of investigation that involves leaks, whether it's undercover or overt, we are going to be interviewing, reviewing files of individuals, and many of those leads will prove to be of no value, or an absence of criminality. But all of them are based upon allegations, and we have historically had the province of assessing the reliability of those allegations.

Now, in terms of predisposition, predisposition is a term that is applicable to the defense of entrapment. That is offered by someone who admits his guilt, but says he wouldn't have done it except for being overreached and persuaded against his will to do something.

Predisposition is not the criteria for the instigation of a criminal investigation. I said in my statement that we try to create a setting in which those who are predisposed will come, because we are not interested in having a whole bunch of people come in and be screened out.

As a matter of fact, I think it will show when this one investigation comes through how few indeed met that criteria. And, as Mr. Heymann pointed out, not only do we try to go on the basis of the information that we have where criminality is indicated or alleged, but also in the setting itself, we take extra precautions to be sure that anyone who manages to come into that situation not predisposed, is quickly made aware of the situation, so that he is in no doubt as to what he is doing.

And, in fact, the reports that Congressman Seiberling and you made reference to about the Senator, I think, when the facts are known you will have an indication of the procedures that we put in place. Because the effort was to be certain that no one was being trapped. There would be no way in which the defense of entrapment could be successfully raised and, in fact, again, I point out to you we are putting ourselves on those tapes, as well as the individuals under investigation, and those tapes are going to be before the court, and we know that if we misbehave, the record will be there in technicolor or black and white, at least, for all the court and the jury to observe.

Mr. EDWARDS. Your time has expired.

Chairman RODINO. Thank you.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

Mr. Heymann, on page 24 of your statement, you said:

* * * if we are satisfied of the individual's criminal intent, then we cannot and will not shirk our responsibility to continue the investigation and to prosecute, if warranted, regardless of how prominent or powerful the official may be.

Now you told us about the investigation of electrical inspectors in Chicago. Tell me again why you didn't investigate and prosecute Dr. Peter Bourne in the White House.

Mr. HEYMANN. I'm wondering for a minute, Mr. Hyde, whether it's appropriate for me to say anything about that or not.

Mr. HYDE. Well, excuse me. Mr. Rodino is objecting to the question, and Mr. Edwards is agreeing to the objection, and I don't want to embarrass anybody, so I will withdraw the question.

Mr. HEYMANN. There is a simple answer, and the simple answer, to the best of my knowledge, is that no one is prosecuted for similar behavior, and that ought to apply to political figures, too.

Incidentally, it's a principle that isn't always easy for one in my position to maintain. It's easy, as you gentlemen, I think, sense nowadays for someone in my position to say let's go ahead and prosecute a political figure. Administrative, executive or legislative, State or Federal.

It's hard to say let's not prosecute a political figure who may or may not have technically violated the law in a situation where no one else would be prosecuted. That's the category that I believe the Bourne matter is in.

Mr. HYDE. Well, if that's so, that's fine. If that wasn't a violation——

Mr. HEYMANN. It's not a matter of saying it's not a violation. Whether it was or not, it's a matter of saying there are situations where no one else would be prosecuted, and I believe in those situations, even if a political figure has violated the law, he or she should not be prosecuted where no one else would be, simply because they are political figures.

Mr. HYDE. Well, you can understand the sensitivity a Republican could have to a situation like that, having endured the mudbath of Watergate.

Let me ask you another question: Now the media has reported that the Justice Department considers two of the Abscam cases weak. Are you checking to see who made that evaluation and how that leaked?

In other words, if two were weak, then six are strong; is that part of your investigation?

Mr. HEYMANN. The answer to that is no, Mr. Hyde. There are some leaks that seem to me to just simply belong to "silly season," and we have entered silly season. I only feel extremely badly about leaks when they bear on the reputation of particular individuals. When they are simply silly season leaks, I am not worried about them.

Mr. HYDE. I am a great believer in undercover operations, and I would respectfully suggest a sting operation to catch your leakage.

Mr. HEYMANN. It was indeed suggested to me seriously as part of the leak investigation.

Mr. HYDE. There was a fascinating letter in the Wall Street Journal of February 14 by a professor at a theological seminary. He quoted the

Old Testament. He quoted Leviticus, chapter 19, verse 14: "Do not put a stumblingblock before the blind."

And he said this means don't offer a Nazarite, who is prohibited from drinking wine, a glass of wine.

Now those in Congress and public officials have taken an oath freely to be the equivalent of teetotalers when it comes to corrupt money. You don't see anything unjust in tolerating circumstances where a public official is offered corrupt money, do you?

Mr. HEYMANN. I regard the situation, Mr. Hyde, of offering a public official corrupt money with no predicate out there at all, no reason for it, no operation suggesting it to us from the outside world, as right on the line. It is plainly legal, it seems to me.

It seems to me not unfair by the standards of things that we do daily in the criminal business to expect an electrical inspector, a city councilman, a major, a Governor, a Congressman, or an assistant attorney general, to turn down what is plainly a bribe. It is not something that we have to be terribly concerned that people should accept by mistake.

On the other hand, I believe that there should be either a reasonable system of self-selection or some basis for going forward. We are not in the business of testing morality.

Mr. HYDE. I understand that.

May I ask you this, without compromising the present investigation: Can you tell us how the particular Congressmen who were involved were selected? Or were they self-selected?

Mr. HEYMANN. Well, the only thing I can say is what I have said before, and I am sure the Director has said before, and that is to the best of our knowledge, no one in the Federal Government or working for the Federal Government picked any of the individuals.

Mr. HYDE. Is the proposed charter that we are dealing with broad enough to cover an Abscam operation such as we are dealing with?

Mr. HEYMANN. The proposed charter broadly authorizes undercover operations subject to guidelines promulgated by the Attorney General, and it is my view that there is no, and should be no, special category of undercover operations that go to public integrity questions.

Therefore, my answer would be yes.

Mr. HYDE. Thank you. My time is up.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman. I, too, would like to commend the Director of the FBI and Assistant Attorney General Heymann from the Criminal Division for many of the operations which have been successful in bringing people to justice.

That the Director of the FBI, Judge Webster, is being honored tonight by the recording industry probably is largely because of Modsoun, the operation which stopped record piracy.

I take it, however, that these are relatively new operations, that at least while there is a historical use of undercover agents, that one can point to, the amount of resources dedicated to the more recent operations are a new kind. What we know about in terms of experience is relatively little.

I take it by suggesting, Judge Webster, that you were forced to discontinue 15 operations because you didn't have the resources, it is not criticism of Congress, since I think you came and asked for $3

million, and were not in fact denied resources in order to pursue those operations; were you?

Mr. WEBSTER. No, that's absolutely correct. That was not intended as a complaint, but simply to indicate that the reason for the increased request for the 1981 budget——

Mr. KASTENMEIER. To gain some perspective, I think the year before, it was $1 million, and then $3 million in the present year, and $4.8 million.

Mr. WEBSTER. I think we've had $3 million for actually 3 years, 1978, 1979, 1980, $1 million first, and then three $3, and then $4.8 is requested this year.

Mr. KASTENMEIER. Which I believe suggests a linear upward curve regarding these operations and what is intended, and therefore I think it is important for us to look at them.

In terms of the notoriety and sensationalism that comes out of these operations, and the possible inability to prevent or manage the leaks, I think obviously you have a problem. Evidently the press in the country is going to look for these stories in the future with even greater intensity and interest. Therefore, I wonder whether you have the ability to maintain the secrecy required to protect your operations and to protect those innocently involved.

Mr. WEBSTER. I certainly hope that we do, because they are too important to give up for that reason alone. It is very important to us that the integrity of these investigations be maintained throughout, and including the period of grand jury investigations and trial.

Of course, once there is a grand jury investigation, it is very difficult for those matters to remain unobserved by an alert press and media.

Very often in today's investigative journalism, though, which has come to the fore in the post-Watergate era, we find that investigative journalists are working the same territory that we are working, so that it comes as no great surprise to us to find that they are there and aware of some of the things that we are doing.

We had early reports in the Abscam case in October of last year, or in the fall, from a newspaper who is not mentioned in the current list of those who had the stories at the time we were conducting our overt interviews.

It will be a problem for us, and we are addressing it seriously, but, again, I don't believe this is endemic to undercover operations other than a premature exposure of one can endanger some of our agents.

Mr. KASTENMEIER. Well, actually, while apparently the Attorney General was looking for the source of the leak, someone in a high place, either in the Bureau or in the Justice Department, had to also make a decision to manage that leak by further briefings and official leaking. If we are to look at the most recent operation, all the information could not have all come from the original leak. It had to have been that someone made a judgment at the top to make an arrangement with the press whereby they are briefed, in return for which they were to suppress, presumably, the breaking of a case. Isn't that it?

Mr. WEBSTER. I have no knowledge of that. It is my personal view that the one leak in the New York Times was so complete that there must have been access to Government documents which would not have necessitated any further briefing or clarification.

I might say that on January 30, which predated the weekend in which we brought this operation down, we advised our field offices

that there appeared to be some press awareness of what we were doing, and urged them to intensify their efforts to keep the thing under control. On Sunday, when the New York Times article came through, and the Washington Post article was available to me at my home, I contacted the Attorney General. We discussed the situation, and Monday morning, the Attorney General issued his statement ordering an investigation.

I sent that statement to the field. I also sent a personal statement on holding tight. The following week I sent still another communication to the field, and I have publicly stated my views of the impact of this type of leaking.

We don't know that it was us or some other group or agency or employees. It is a problem. It is a problem that involves questions of ethical restraints by the press, not legislation and not regulation, but decisions——

Mr. KASTENMEIER. Judge Webster, then you are saying that perhaps the Justice Department at a high level made a determination, surely somebody did, to fully inform the press, so that a premature leak wouldn't take place. Is that not the case?

Mr. WEBSTER. Are you talking about before the interviews took place on February 2?

Mr. KASTENMEIER. Yes.

Mr. WEBSTER. I am not aware of that. I have participated with the highest officials in the Department of Justice in the closing down of the operation, the covert phase of the operation, and I am not aware of that. It certainly did not take place within the Bureau.

Mr. HEYMANN. I agree with what Judge Webster said, Mr. Kastenmeier. It's worth pointing out that the Attorney General, Judge Webster, and I, plus a number of other people are by now under oath, having promised to take polygraph tests as to all we know about any of those leaks.

I was told that I was free to take the polygraph test or not, but I was to know that Judge Webster had already agreed to take one. I think it's called coercion.

Mr. EDWARDS. The gentleman from Ohio, Mr. Seiberling.

Mr. SEIBERLING. Thank you, Mr. Chairman.

Mr. Heymann, you pointed out at some length the success of many undercover operations, including fencing and other operations of that sort. But I think if we're going to understand the issue that we are dealing with here, we've got to understand this difference between those types of operations and the one that we are talking about right now.

It seems to me the difference between undercover fencing operations, for example, where the individuals come in to fence the stolen goods, and this operation, or the operations that we are involved in, are considerable.

In the fencing operation, the person who brings in the goods has already been involved in a crime or crimes, that of receiving stolen goods. He is also self-selected by coming in on his own.

Now if you are going to analogize that to what has happened here, if the FBI or its middlemen went to an individual who had not stolen or received stolen goods, and attempted to put some stolen goods into his hand, and let him know that they were stolen, and then told him

where to go to fence them, directed him to the undercover fencing operation, that would not be self-selection in the same sense. That would be FBI-selection of that individual, and indeed it would be the FBI attempting to corrupt that individual by, first of all, getting him to knowingly accept stolen goods, and second, to come and fence them.

Now that's the analogy to this situation, and it's quite different, I think, from the ones that you describe. Am I correct in that?

Mr. HEYMANN. I don't think so, Mr. Seiberling.

Mr. SEIBERLING. Well, please explain in what way that isn't a good analogy.

Mr. HEYMANN. Let me take it in the steps that I think you take it in, Mr. Seiberling.

First of all, there are obviously many perfectly proper Sting undercover operations where we have no basis for believing the individual has already committed a crime like stealing property. When a policeman goes out in Central Park, dressed like a little old lady and gets mugged, he may get mugged by a new mugger or an experienced mugger. I hope the city of New York will arrest and prosecute in either event.

The same is true even when you think about it in a hijacking sting type operation. It would be nice to pretend that the hijacked goods have already been hijacked at the time that we set up our sting operation, but we run the sting operation—we ran the one in Boston for about 18 months. The fact of the matter is, people are going out and hijacking goods, and then bringing them to us, knowing all the while——

Mr. SEIBERLING. May I ask you, are there any such operations where the FBI first put the stolen goods in the hands of the individual who came in later?

Mr. HEYMANN. No. No operation that I know of, including this one.

Mr. SEIBERLING. Yet that's what the FBI did in this case, apparently, in trying to get individuals to accept bribes.

Mr. HEYMANN. There is a major difference, Mr. Seiberling, and that is we have no agent going out and making contact, and I am going to drift off in the general, becuase I don't want to talk about the Abscam investigation. I know of no case where an agent has gone out and tried to persuade a political figure to take a bribe, which would be the equivalent of trying to persuade him to take stolen goods.

Having said that, I am a little bit worried about it, because there is a reported case, affirmed without any difficulty by the courts, something called *United States* v. *Santoni*, where an agent did offer a State legislator money, having reason to believe that the State legislator had previously solicited money.

The situation that I think—the reason that I think you are picturing a situation, Mr. Seiberling, that doesn't correspond to what we have in mind is that we have Federal agents going out and contacting individuals and not connected in any way with the Federal Government, and with their friends and associates who deal for them, and who are themselves not connected in any way with the Federal Government, conduct these operations.

If we are talking about—if we have an organized crime operation, where a big organized crime figure is in the business of demanding

kickbacks, and if everybody knows that, and if he has friends and associates who go out, who radiate out from him and ask for kickbacks which eventually go to him, our contact with those friends and associates is not forcing kickbacks on the organized crime figure.

It is only if the agent goes there and does a lot of fancy talking, somebody will be responsible for it, if they go and do a lot of fancy talking and inducing. Then you've got a situation like the one you described where stolen goods are put into somebody's hands.

We don't have a situation where we have any agents doing a lot of fancy talking and convincing.

Mr. SEIBERLING. My time has expired.

Mr. EDWARDS. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

I'd like to explore the concept of middlemen. These are these very mysterious characters, and the head of the FBI himself says:

"The middlemen, of course, are not under our control." Yet he has total control of this total operation. Well, who are these middlemen? Are they informants? Are they paid?

The Director also says that the middlemen, of course, do not know that they are dealing with the FBI. Well, where do these middlemen come from, and how accurate is their information?

Mr. WEBSTER. Congressman Drinan, I may have slipped into using the word middleman just as——

Mr. DRINAN. It's crucial in your testimony.

Mr. WEBSTER. Yes. I've used it. I'll stand by it.

Mr. DRINAN. It's very vague, and it makes me alarmed about the whole program, when you shifted the focus from informants to middlemen. Who are these middlemen?

Mr. WEBSTER. I'll be glad to answer that. I'd say the use of the middlemen may create, as it has with you, a different perception than we have of what this person is.

Very simply, the middleman is a subject of investigation, a target of prosecution. In the Abscam case, we started in stolen artwork. That investigation has already yielded over $1 million in actual recoveries. It took us through a chain, the same people who were bringing us thieves became involved in bringing us influence, people who were willing to sell their office.

Now, whether it's a city or State—and we did, we followed it through. Corruption at the municipal level, and then at the State level, and then finally the same people who were the subject of our investigation.

Mr. DRINAN. These are the middlemen?

Mr. WEBSTER. The middlemen.

Mr. DRINAN. Why are they the middlemen? Between whom are they?

Mr. WEBSTER. They are the influence peddlers, those who make it their business to deal with Congressmen willing to sell their office.

Mr. DRINAN. These are the crooks that you are after originally, and now the whole thing has gotten away from art, and into politicians, so you have taken the middlemen, who are allegedly crooks, known crooks, and you accept their information about Congressmen. Is that what you are saying?

Mr. WEBSTER. I'm saying that in the criminal world many of our informants have been living criminal lives, but that does not take away the reliability of their information.

It is only by getting close to these that we can reach beyond the streets and get out to the place where the influence and the other illegality is taking place.

Mr. DRINAN. Well, do the middlemen graduate into informers? I'm still confused about the middlemen.

Mr. WEBSTER. No, no. They do not graduate into informants. We occasionally have informants who lead us to middlemen, but the middleman—let's just call him the subject of investigation.

Mr. DRINAN. All right, he's the suspect, and all of a sudden now, he's the one that's leading you away from art theft into alleged political corruption, and you rely upon them, when you say they are not under your control at all?

Mr. WEBSTER. He doesn't know that he's dealing with the FBI or law enforcement agency. He believes he's dealing with somebody he either can ripoff or can take money from in a criminal sense.

Mr. DRINAN. And who decides now on the predisposition, the question earlier that Mr. Rodino asked, that really wasn't answered? The middleman comes to one of your informants or agent, and says, "I think this public official has a predisposition." Someone at the Department of Justice or the FBI has to sit in judgment and say, "Yeah, we believe this middleman and we're going to move on this."

Now by what norm is that made?

Mr. WEBSTER. He doesn't ordinarily say somebody has a predisposition. He's probably a little more candid about that. He's apt to represent to us that he is in his pocket or he is in his stable, or that he is known to have done this for some period of time, or he can be had.

There are a variety of ways that these things are expressed in criminal terminology by one criminal dealing with someone that he thinks is equally unsavory. So that we have the information. Then within the time constraints that we have, we can run our own check and see whether there is any reason to believe it's reliable or not reliable. And we do this.

We don't go out in the neighborhood and ask, "What's the general reputation of that person?" But we see whether there is any basis for it.

In the particular case, you in part demonstrate your reliability by producing, and these people produced, and they produced under circumstances that a court can adjudicate in the future, and I don't think we should talk about that.

We try within the guidelines that we have and in the point of time in which someone, some new person, is coming into the conspiracy or coming into the plan or the deal, to make sure before we cause him to commit an act which he would not otherwise commit, such as the acceptance of a bribe, to understand in the clearest of terms what is happening, and to make them elicit the promises in exchange for the office and the influence of the office, before any money passes.

Mr. DRINAN. Well, Mr. Webster, that's not a very satisfactory conclusion, but before my time is up, Prof. Gary Marx of MIT has written a very thoughtful article that the Members have here, where he gives evidence that undercover operations actually increase crime.

He has statistics here where there is a stimulant for theft from the sting operation, and where in one instance the DEA paid up to $400 over the ongoing price per ounce of cocaine, and that apparently increased the traffic in cocaine.

Would you like to make any observation on the evidence—and I think it's growing evidence—that actually the undercover operation stimulates crime in certain areas?

Mr. WEBSTER. I'm not privy to that article, or the facts that are set forth in it. Mr. Heymann earlier mentioned that we try not to create a setting which is unreal to the alleged criminal or person about to commit a criminal act.

Now, that's one benchmark of protection that we can take. As I look at the undercover operations conducted by the Bureau, I see no basis for saying that these operations contribute to crime.

In the Lobster case, for instance, Operation Lobster in Boston, where we had such enormous hijacking of trucks and operations up in your part of the world, Congressman Drinan, that when we brought the Operation Lobster down, there wasn't another hijacking for what was it, 6 months?

Mr. HEYMANN. It's been about 6 months.

Mr. WEBSTER. It had a very deterring effect on crime.

Mr. HEYMANN. Could I say a word in response to you, Congressman Drinan? On your last question, I would suppose that for a period of time, and we could actually check it; it's rare, but we could probably check this—I would suppose that for a period of time there were fractionally more hijackings in Boston because we were buying goods and they didn't have to take them to New York, and then a very substantial reduction to nothing thereafter.

The total effect would be a substantial reduction in hijacking.

On your question to Judge Webster on who finds predisposition, I think the answer is that though we will try to check before an offer is made to anyone, there is no requirement that we find predisposition in advance of making an offer in any undercover operation. Now we are not talking about political as opposed to something else, and the reason for that is because the only harm that the recipient of the offer is exposed to is the harm of being made an illicit offer.

Now I don't mean to say that's nothing, because it has serious consequences. You don't know how you would react, you don't know whether you would call the police or not. It is difficult, but the harm is not a harm like having your house searched or your phone listened to, or being called to give testimony.

The only harm is that someone makes you an illicit offer, and for that reason, the courts have never required us to find in advance predisposition. And although, as Judge Webster said, we ought to try and we will try, there are situations in which we can't—I think you people would agree we should not—if we are running an undercover liquor operation in Iowa and a crook of unknown reliability, of unreliability, comes up to us and says, "There is a police captain here who wants to sell you protection." I think that we ought to say, "Bring in the police captain."

Now, that doesn't mean to do anything except that if a crook says to us, a crook totally unreliable says, "A police captain wants to sell protection, he regularly sells protection to bars here," I think we ought to say, "Bring him in."

But we ought to make sure then that the transaction is unequivocally clear, and if he tries to sell protection, arrest him.

Mr. EDWARDS. Your time has expired.

The gentleman from Missouri, Mr. Volkmer?

Mr. VOLKMER. Thank you, Mr. Chairman. I'd like to get back to that subject that the gentleman from Wisconsin and I discussed, and I think it is very important to us to make a decision on it eventually, and I believe you mentioned, Director Webster, that without the $4.8 million for fiscal 1981, you would not be able to continue some of your operations, and they had to be prematurely terminated.

Now I am not going to ask you specifically as to any specific operations, but what I want to know is, is the increase meant to continue only on existing operations, or also to start up new operations as well?

Mr. WEBSTER. We have a number of proposals for new operations that have gone through or have been going through the Undercover Activity Review Committee process. The operations are not static, they do close down, and new ones are started as we go along.

The 15 I mentioned were those that we terminated in order to stay within, as best we could, our financial constraints, and we did exceed the $3 million by—I think it's $310,000.

Mr. VOLKMER. Well, this has been approved by the Budget Office; is that correct?

Mr. WEBSTER. By our Budget Office?

Mr. VOLKMER. They have approved this $4.8 million?

Mr. WEBSTER. $4.8 million?

Mr. VOLKMER. Yes.

Mr. WEBSTER. Yes; I understand it's approved, all the way up through OMB.

Mr. VOLKMER. So there are a lot of people who agree with us, as I do, that there is a positive use of these funds in combating crime in this country, and I just want to tell you right now that I am in support of the full amount.

The other thing I'd like to ask about is in the charter, you mentioned also that during the process of effecting the guidelines in this area, do you have a timeframe which you feel you will be able to have a final draft on those guidelines?

Mr. WEBSTER. We are coming right along. I would have been happy—I know Mr. Heymann would have been happy—if we could have said to you we already have them. We have been working on a document——

Mr. VOLKMER. Well, we're still working on the charter, so there is no big hurry to get the guidelines.

Mr. WEBSTER. Well, the reason we are in a hurry is because I have been trying to bring the Bureau within the charter in every respect, and when these guidelines are ready, the Attorney General is going to promulgate them, with or without a charter.

We are very pleased with them. We've got about four or five minor areas that didn't take something into account, or did take something into account the wrong way, and we are working it out.

I am very optimistic about it. I am very pleased with the progress.

Mr. VOLKMER. Will I be able to receive a copy of those guidelines?

Mr. WEBSTER. You are saying when we are finished?

Mr. VOLKMER. When you are completed.

Mr. WEBSTER. Yes. I don't think there is anything confidential in these guidelines, any techniques.

Mr. HEYMANN. I think there is no problem there, Mr. Volkmer.

Mr. VOLKMER. Thank you very much. I yield back the balance of my time.

Mr. WEBSTER. I think you are going to have a chance to look at these in your oversight responsibility.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. I thank the chairman for yielding. Very briefly, for a few seconds, I want to address a comment to Mr. Heymann. Despite my first question, I want the record crystal clear that I have total confidence in the competence and the willingness of the Justice Department to fully and fairly prosecute public corruption cases. Your actions in the *Diggs* case, in the *Eilberg* case, in the *Flood* case, indicate to me that you will prosecute all of these things without fear or favor.

I genuinely am curious about the one case I mentioned earlier, but I didn't want to leave the wrong implication. I have total confidence in the Justice Department.

Mr. HEYMANN. Thank you, Mr. Hyde.

Mr. EDWARDS. The testimony of both the witnesses was very positive.

From your testimony, Judge Webster and Mr. Heymann, one would think that all of these operations had worked out beautifully, and so why don't you tell us a little bit about an operation or two that has been a disaster?

For instance, Front Load in New York, how much is that going to cost the taxpayers?

Mr. WEBSTER. I think it's a little bit premature to make assessments about Front Load. That was an operation that predated the Undercover Activity Review Committee. There are circumstances about that case that lead me to feel that we don't have too much apologizing to do for it.

It was an insurance case undercover program designed to discover fraud in the insurance field. It has a legitimate objective. We encountered an errant informant, not an undercover agent, but an informant, who went off on his own under circumstances that will be reviewed in the course of litigation, I am sure. If we have not already briefed the committee, we can certainly do so.

I understand that the first phase of litigation resulted in favor to the Government. I am quite optimistic that there will not be a major expense to the Government.

It was unfortunate. It was a good program. It was flawed, and I believe that under our policy, one that I mentioned in my statement this morning, that what went wrong there would not have occurred.

Now, Mr. Chairman, I don't want to represent, and I said we don't have perfection in the investigation—I don't want to represent that we aren't going to make some mistakes. It's a little like the loan business; if we don't make some mistakes, we are really not in business. But the important thing is that we minimize those mistakes, that you be satisfied as our oversight committee with the procedures that we have in place, and that you be satisfied that when we do make mistakes, we do something to see that those mistakes don't recur.

Mr. EDWARDS. Well, I believe that the gentleman from Massachusetts put his finger on the problem I don't think we have resolved yet, and that is the problem of these free-floating purveyors, middlemen, or whatever they might be, often of dubious reputation, sometimes hoodlums who, while not working for the FBI, are certainly

working with the FBI, because they are the ones who bring out the leads. They are the ones who finger people. How do you control them? What devices do you have for auditing their activities? In our private conversations, we made it very clear, the chairman and I, that a number of innocent people have been damaged very severely by these operators, by these middlemen.

Tell us what you are going to do in the future about controlling their activities so that other Americans aren't severely damaged.

Mr. WEBSTER. I guess I would have to put aside the issue of the damage, because that assessment is not in, and I don't want to appear to be agreeing to it, but I do recognize that influence peddlers, those who sometimes really have the capability and sometimes were con men, do a great deal of damage.

They are already doing a great deal of damage, and they are the people who cause or induce public officials to sell their office and breach their public trust, and they are the principal menace in corroboration and collaboration with these who are willing to go along with their act.

We are interested in them as subjects of investigation, and we intend, when we investigate them, to develop evidence for their prosecution, and we do, and we will.

To the extent that they make representations, you might be interested to know that the executive branch is not immune from the same types of representations by middlemen as to the amount of influence they peddle, and we investigate the executive branch just as vigorously as we do legislators whom these people represent are in their stable.

I don't think it's incumbent on us in an undercover operation to demand some type of specific proof of prior illegal activity by those that these people say they have in their stable. I don't see that at all. That would be inconsistent with the scenario of undercover. They don't know that they are dealing with the FBI. They are not under our control, nor do they think they are under our control.

What we do try to do is identify the con men who are misleading us in the attempt to rip off whatever cover our undercover agent is functioning under, and to deal out those operatives, if they are not in fact engaging in illegal activity.

In the Abscam case, again without trying to get into facts, there were influence peddlers—and there was a chain of them, one led to another, there were others who introduced them. They were told consistently not to bring anyone to the undercover agent, unless that person was prepared up front to make promises which would in a legal sense violate their trust.

We don't express it, obviously, to the middlemen in that sense, but unless they were prepared to make these statements and assurances up front, and to take the money personally, so that there could be no opportunity for the middlemen, or at least minimized opportunity for the middlemen to mislead the public official as to the purpose of that visit.

Now, in at least one, and maybe two, cases, that's exactly what happened. But step two, which we instituted to control the operation, was that in our handling of the situation, it was made clear to the individuals that it was a criminal activity, or at least an activity which that person could not in good conscience participate in, and he walked out, and that's exactly what we intended.

So we had two things in place there:

One, don't bring us anybody who isn't prepared to be up front with us; and two, if he comes, then it was our purpose and plan to make sure before any money was passed to that person, that he understood the criminal nature of the situation and that whole process was monitored by U.S. attorneys watching the process and in a position to cut it off if at any time our agent exceeded the bounds we had set for them.

Mr. EDWARDS. Well, we will continue to have a dialogue on this subject of these middlemen. They are of great concern to the subcommittee.

Mr. WEBSTER. Of course, they are.

Mr. EDWARDS. And I am personally not satisfied that some of them at least are not out of control and have been triggered by the FBI to go on capers of their own, with the result that innocent people are injured.

My time is up, and I yield to the gentleman from New Jersey.

Chairman RODINO. Thank you very much for yielding.

Director, I am intrigued by the last satement you made concerning the so-called middlemen or purveyors. It seems to me that if you review the statement you made, and I seem to recall it very clearly, you talk about the middlemen bringing in someone who they say is prepared to engage in criminal conduct, to accept money.

Now I think you ought to reflect on the cases that you have had before you. If you place that kind of reliance on the statement of the middleman or the purveyor whose conduct in the past has been questioned, and whom you say is already under investigation himself, it seems to me that you are going to a great extent to continue this kind of an operation. You continue to wonder about whether or not there might be a leak and an innocent person has been implicated, when that person is not at all involved.

It seems to me that you have responsible people in the FBI, your agents, who I think are responsible enough and expert enough in undercover activities to be able to review what that informant has or has not said about such-and-such a person may be in his pocket, or words to that effect, as you have said. Do you engage in this kind of further review so that the informant who has made this kind of statement to you, so that what he has had to say is really carefully weighed? Can you recite that in the cases that you have conducted, this is what you have actually done?

Mr. WEBSTER. If I understand the chairman's question, I can certainly say yes, at various levels, the reliability in the sense of whether the statement made has a basis sufficient that we would have an obligation to investigate further is assessed.

Now we have for cross-checking available to us within certain time constraints—depending on how fast the situation is breaking—we do the best we can. We up the level of approval consistent with the individuals involved, and the sensitivities involved.

For example, in a number of these instances in Abscam, by both I and the Assistant Attorney General, we were aware of and approved the proposals based on the information furnished to us. Those of us who live in a world of decency, at least among our friends and associates, sometimes find it hard to assume that anyone who engages in crime can tell the truth. But when he is telling the information to someone who he thinks is in league with him, that is sometimes the way by

which we get our very best information consistently, in all types; not just public corruption cases.

But in other instances, we have some of the most important ones now that are going through the process, organized crime figures dealing with our undercover agents, and telling us things that are true and turn out to be true.

So there has to be some investigative judgment call. What Mr. Heymann pointed out, and what I pointed out, is the nature of the controls that we have on entrapping innocent people. I can't guarantee that in an Operation Lobster, or even a sting operation, some innocent person isn't going to walk in the door thinking that this is for him or have some misapprehension about it.

I gave you the ground rules that we apply to try to minimize that. We haven't the interest or the facilities to keep screening out people banging on the door, because we haven't taken the precaution to keep them away. We can't obviously inform the influence peddler that we are the FBI and we don't want him to bring any innocent people—I don't mean to be facetious about that, but we have to carry out the cover, and the two ground rules are don't bring us anybody that isn't going to be up front with us, and then we take the second ground rule, which is to be sure that that's the case.

Chairman RODINO. That's why I would like to be convinced that under your guidelines you are able to say that you now have reasonable grounds to believe, based on the fact that you have actually scrutinized data, not only what the purveyor has said, but what other information you may have—I would like to be convinced that it isn't just the purveyor and some rumors—that the FBI doesn't go forward and then engage in this kind of operation, which when ultimately disclosed and leaked, damages the reputation of innocent persons.

Mr. WEBSTER. No one would like to convince you more than I, Mr. Chairman. In the course of these proceedings, I do want to emphasize that in investigations particularly where we are trying to reach beyond the streets and go out and reach the areas that all of you have been telling us to go in, that we are not sitting as a grand jury. We don't have to have probable cause, but we do have to have a reasonable suspicion and move on it.

I know you don't ask for any more than that, but I hope we will be able convince you.

Chairman RODINO. That's all I'm asking for, and if you can convince me that that's the way you have been conducting these operations, I would like to applaud you.

But I would also like to state that if you have undertaken to go beyond that, that you have ackpowledged there is a mistake, because I think that's the only way we are going to be able to proceed, where mistakes are made and acknowledged, and that this thing can be a kind of mutual cooperation, where we understand that you are engaged in doing that which is done responsibly.

Mr. WEBSTER. I heartily concur, Mr. Chairman.

Chairman RODINO. Beyond that, I'd like to ask one further question, Director, regarding Operation Front Load. The chairman asked you about the amount of money that might be involved in the event of damage suits being successfully waged against you.

Was it not at some time stated by your department—and I can't say who by—that there was some thinking that it might cost the Government some $5 million?

Mr. WEBSTER. I'm unaware of any such statement. I am informed that one of the five suits have been dismissed. We are very confident about those lawsuits. There are a lot of numbers, you know. It only costs $25 to file a lawsuit, and you can allege as many million dollars as you want, but we have thus far in our assessment of the damages been accurate to date.

I will be glad to brief the chairman on that.

Chairman RODINO. Well, thank you very much.

Mr. EDWARDS. Because of the shortage of the time, we are going to operate under a brand new rule, a 2-minute rule.

Mr. Hyde.

Mr. HYDE. Well, that brings up an analogy. Judge Webster, I think we have all seen football games on television, and wished that the field judge or the referee could have the benefit of the television replay, which we the spectators do, so he could see exactly what happened, not what he thought happened on the field, under the emotional stress of the game.

Isn't it true that in criminal cases, many times you have to rely on informants of dubious reputation, criminals, coconspirators, whose credibility is easily attacked by defense counsel? Oftentimes you have to grant immunity to someone who is involved in the very crime in order to get evidence sufficient to prosecute.

This gives the defense attorney the opportunity to wax poetical about the purchased testimony. All of these obstacles are obviated, are they not, by having the videotape of the transactions, so questions of identity, of what exactly was said in the surrounding circumstances are there for the judge and for the jury? Isn't that true?

Mr. WEBSTER. I believe that's correct, yes.

Mr. HYDE. Many times in political corruption cases, where the crime is consensual and the activity is consensual, undercover techniques are about the only method available to you, are they not?

Mr. WEBSTER. Well, bribery, gambling, prostitution, and other consensual crimes are very much like adultery, rarely performed in the public streets, and we have to take an undercover approach.

Mr. HYDE. I'm told that Secretary Stimson some years ago said, "Gentlemen don't read other gentlemen's mail." Do you think that if that were mandated in the FBI Charter that we could cope with public or official corruption today?

Mr. WEBSTER. That was in a different time. We now carefully prescribe the circumstances, which are rare indeed, in which mail can be opened. In the foreign counterintelligence field, those Marquis of Queensbury rules really will not permit the type of success that we have.

What I would rather focus on are the due process issues, to be sure that the rule of law does apply, and if the law permits us to use deception as a means to get at someone so buffered and so insulated that he would not otherwise be found out, that we should be allowed to do so, subject to oversight, subject to guidelines, and subject to our internal procedures.

Mr. HYDE. I yield.

Mr. EDWARDS. Mr. Kastenmeier?

Mr. KASTENMEIER. Thank you, Mr. Chairman.

The reason I think these hearings are so important is because these techniques for which an increased amount of money is sought, is relatively recent, and it seems by embarking upon them, we need to know in terms of public policy what we are upon.

Mr. WEBSTER. Absolutely.

Mr. KASTENMEIER. As far as Congress being subject to this, there is a difference, of course. Partly that suggested by the gentleman from Ohio. Also the fact that while a number of Members in the last 20 years or so in the House and Senate have been prosecuted for crimes effectively, this is the first time that a Federal investigation has proceeded through the back door involving a large number of Members of Congress. Not even in conspiracy, that is not in relation one to the other, and while, as Mr. Heymann says, he asked rhetorically, is there anything special about public officials, the answer being no, except we really do have to treat them differently, he says. I think correctly, because we have the problem of not necessarily whether this is or is not an abuse in the Abscam case, but in the future might this be an abuse in the hands of another Justice Department, where these decisions have to be made.

I, for example, Mr. Heymann, know that you do have a procedure which I wonder whether is actually followed in each case here. That is to say the U.S. attorney's manual mandates in every sensitive case, a sensitive case involving a public figure, cleared at the top level, the information to be sent to the Attorney General, to your office, and to the deputy, and presumably there is a program for clearance in each case.

Was it actually followed, however, in the Abscam case?

Mr. HEYMANN. I think the answer, Mr. Kastenmeier, is that is was not formally followed, and the reason for that is that although the sensitive case reports, which is what we call those, only are made in five or six or seven copies, I don't think that we would send around in the Department five, six, or seven copies of any undercover investigation.

The Attorney General was aware of the Abscam investigation, but plainly the center of responsibility on the lawyers' side of the Department of Justice was at my level. He was certainly aware of it.

The other people who receive these sensitive case reports are the Associate Attorney General, who handles the civil side. I assume he was not aware of it. The Deputy Attorney General, my immediate boss, he was aware of it.

Mr. KASTENMEIER. Well, I asked that question because it was my information that it was assiduously followed in this case.

Mr. HEYMANN. It is not intended to be a protection in the handling of sensitive cases, Mr. Kastenmeier. If it were, it would raise all the questions that Mr. Hyde commended us earlier for avoiding. Then you would way whenever you ahve a political case, it goes shooting right up to the political levels of the Department to be analyzed and passed on there. The function of the sensitive case report is to make sure that the people who are doing appointments, for example—and, this has come up in one of these cases, not Abscam, but in Brilab, according to the newspapers—that the people who are doing appoint-

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ments of judges and U.S. attorneys know if there is an ongoing investigation in the FBI and the Criminal Division. It is not to be a review for the propriety of the investigative steps or anything like that.

Mr. EDWARDS. Mr. Seiberling?

Mr. SEIBERLING. Thank you.

I hope that we will have a subsequent hearing, and perhaps several sessions, so that we could really explore in depth the nature of the guidelines the FBI has followed or has not followed, in view of the fact that this subcommittee has before it the proposed FBI Charter and must come to some kind of conclusion. I think perhaps it is fortunate that these questions have arisen before we have approved a particular legislative recommendation.

I note that in your interview with Mr. Rowan, Judge Webster, you said this, and this is one of the questions I think we are going to have to get into much more when we have further hearings. Leaving out the parenthetical parts, you said:

> When we have information from a corrupt intermediary who is under investigation, that he has Mr. So-and-So who will help in the illegal project, we have an obligation to follow through that lead, and in the Abscam investigation I can tell you that we followed every lead when we closed it down. There was nothing left in the barrel except what we call scam representations by intermediaries.

I guess the word who has to be in there—

> Who want to produce people whose names were being bandied around, but who had absolutely nothing to do with it, and could not be produced by the intermediaries.

Now, in fact, about half, just taking the Congressmen and basing it on what we have read in the newspaper, about half of the Congressmen and Senators who were contacted by intermediaries turned out not to be leads. They were false leads, they were not correct. They turned down any improper blandishment.

But I think we are going to have to know in very much more detail to what extent this statement of a corrupt intermediary, which is your phrase, is deemed a sufficient basis for an attempt to entice a particular person into committing a corrupt act, and we are going to have to know to what extent you require corroboration and so forth.

I think this applies whether the person is a public official or not. The only difference is that a public official is constantly being approached by people who want help from him, and legitimately so. And what's more, he has his reputation, which is everything. If his reputation is beclouded, he is dead politically, and that's, of course, true of a lot of people who are not public officials. Their reputation is allimportant. So I do think that we have got to know what checks there are on the use of corrupt intermediaries, which is your phrase, to make sure that they do not put a cloud over the reputation of a person who is not in fact going to be predisposed, as you have said.

I have used up my time, I see, but perhaps the chairman will let you respond.

Mr. WEBSTER. We'll be happy to explore that, and Mr. Heymann wants to add a postscript to what I say, but I, too, believe, and I believe that most Members of Congress and most public officials believe with me, that those people are out there, they are hovering around the offices of public trust, and that we do a service when our leads from other sources take us in this direction and we follow it.

I want you to be satisfied with the guidelines that are in place, but I think we both have a common interest in seeing what we can do to get those people away from our institutions.

Mr. SEIBERLING. Well, as we have seen, honest officials do have sensitivity, and when they smell a rat, they are inclined to say, "This is the end, I won't have anything more to do with it." It does bother me, and I think it bothers all of us, that the Government itself would be putting public officials in a position where they have to demonstrate under circumstances where they are not even aware that they are being tricked, they are not even aware that there is some kind of investigation going on, they have to affirmatively demonstrate their bonafides, and I think that raises some questions about the ability of our system to function that are very, very profound, and need to be carefully handled.

This isn't a simple thing. I sympathize with your problem, and I want to see every corrupt instance brought to light and squelched, but at the same time the mass of people and the mass of politicians, I think are honest, and the problem of finding how to find out the crooks and still not prejudice the honest ones is a very difficult one, and we need to pursue it more.

Mr. EDWARDS. Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

There has emerged from this conference the shadowy world of middlemen. They are the new characters in Abscam now, and they are corrupt intermediaries, and I have a lot of trouble with their motivation. We learned the ground rule. You say to the middleman, "Don't bring in anybody unless he is prepared to take money," and in 50 percent of the cases, the middlemen are wrong.

Were the middlemen told that they were going to appear on television, that they are going to be a feature in the trials that are forthcoming? It seems to me that you owe a lot to these middlemen.

Furthermore, did they get compensation? Did they get promises of immunity for prosecution? What is their motivation, when you say, "Go out there and get somebody who will come in and commit a crime on television"? Who are these middlemen?

Mr. WEBSTER. I have to take issue with just about everything you said. [Laughter.]

They are subjects of investigation. We did not ask them to go out and bring us in people. We set a situation in which the undercover agent represented that he was interested in buying favors. As far as knowing that they are going to be on television, of course, they don't know they are on television. That is the part of the investigative technique that we are using to build a case against them, and anyone who conspires with them to violate the law.

Mr. DRINAN. Well, sir, will they be immune from prosecution? Suppose now that the name of this corrupt intermediary comes out in the instance of a Congressman who is vindicated, and his reputation has been damaged. Does he have a right to find out who this character was, the influence peddler, this faceless accuser, this corrupt intermediary? Does he have the right to find out who he is and why he brought him into the situation on W Street?

Mr. WEBSTER. That's a prosecutive discretion matter. I am looking for no immunity, but I will turn it over to Mr. Heymann.

Mr. HEYMANN. I think certainly anyone who fits all those adjectives ought to be prosecuted. [Laughter.]

Mr. DRINAN. Then how many are you going to prosecute?

Mr. HEYMANN. The answer, of course, Congressman Drinan, is these people are, as Judge Webster said, just as much subjects of investigation and likely targets of investigation as anyone else.

The fact of the matter is in any investigation, we make deals or arrangements among the possible defendants in order to strengthen our case with witnesses. We are likely in any investigation, political, nonpolitical, anything that involves a number of people, to prosecute some and not prosecute others.

Some of the people you are describing as middlemen—that was originally my term—will undoubtedly be prosecuted. Others will not. It's a standard arrangement.

I would like to take the opportunity to say one thing that goes to, in a very narrow and careful way, the question Chairman Rodino and Mr. Seiberling and maybe you, Father Drinan, have raised.

If we are running Operation Lobster and somebody comes to us and says that somebody is a hijacker and a crook and no good, unreliable in 1 million ways, and he says, believing that we are crooks and fences, says, "Should I tell John Jones about this? I think he is in the hijacking business."

Our answer, Mr. Seiberling, in particular, is that we ought to say yes, even though the person who said to us, "I think John Jones is in the hijacking business," wasn't certain, and is generally unreliable, but we ought to say to him, "Yeah, tell John Jones about this."

Sure, there is some risk that John Jones will go out and hijack a truck just because he knows about our fencing operation, but that is a very small risk, and that leads me to the following very narrow, but perhaps very important, point:

At the moment we say, "Yes, go out and tell John Jones about it," we don't have much basis for believing that John Jones is indeed a hijacker of trucks. At the moment—and this difference in time is very important—at the moment that John Jones arrives with a truck at the warehouse, we have a very good reason to believe he is a hijacker, and let me explain very precisely why. We have been put onto John Jones by somebody who wants to keep doing business with us, and who obviously has a relationship that he wants to maintain with John Jones.

If we are simply careful enough to say the transaction here is going to be absolutely plain, clear, and incontrovertible, we are going to pay money for a hijacked load of goods, this con man, this nameless informer, this man who has no basis for credibility otherwise,, suddenly has high stakes in not bringing in John Jones unless John Jones really is prepared to sell a truckload of goods for cash. He doesn't want to disrupt his relationship with us by bringing in somebody who isn't a hijacker or isn't selling the goods. He doesn't want to embarrass John Jones and disrupt his relationship with John Jones by bringing him into a place where we are going to say, "OK, now, we are going to take the goods, you get the cash." These are stolen goods.

By the time that man pushes the bell on our warehouse door, there is every reason to believe that John Jones is indeed a hijacker. At the time we said, "Sure, go ahead and make the offer to John Jones," the evidence may have been very thin.

Thank you.

Mr. DRINAN. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. Thank you, Mr. Chairman.

I'd like to continue a little bit and then go to something else I was going to start with, because this is one of the things I wanted to bring up.

I think there is a major misunderstanding by some members of the committee as to how the middleman, as he is called here, actually operates, and that misunderstanding seems to be that they view the middleman as an operative of the FBI which he definitely is not. If we look at it, let's say—correct me if I am wrong—as I understand it, a procedure, take the Lobster case or Abscam or anything else. What we have is a knowledge there is crime—criminal influence peddling or something going on, and then we can know people who are in the business. The FBI then sets up an operation, unknown to those people who are the middlemen as being FBI agents. Is that correct?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. If they ever became known as FBI men, that blows the whole thing, of course.

Mr. WEBSTER. That's correct.

Mr. VOLKMER. It is necessary, then, in the operation, to keep them from becoming suspicious; right?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. So if you started saying to them, "No, don't go see him, we don't want you to see him, because he might be all right," immediately the middleman is going to say, "What's going on here?" Is that correct?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. So, you of necessity, have to tell him, "Well, that's a pretty good idea. Why don't you go ahead?" Because especially if he's already brought in others; correct?

Mr. WEBSTER. That's right.

Mr. VOLKMER. I think we have to understand that. That's a basic imperfection in the system, that's a necessary part of the system. Is that not correct?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. Father Drinan of Massachusetts previously alluded to an article by Gary Marx of MIT. I have taken the time also to read it, and it does point out some imperfections in the system of using undercover, but also I think we must understand—it's interesting reading, by the way—and I don't think it's a profound case against undercover. That's my own viewpoint. It may be the opposite of the gentleman from Massachusetts.

I view the question using undercover or not using undercover on the basis that if we don't use it, there is going to be many, many major criminals, crimes, going undetected and unprosecuted; is that not correct?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. So if we would shut it down, all these things that have been done in the past against crime would no longer be done?

Mr. WEBSTER. That's correct.

Mr. VOLKMER. Let me ask you this. Do you envision actually how you would be able to catch some thieves? Take the Lobster operation.

Do you think the FBI operators could walk into an existing fencing operation and be able to gather evidence against those who are selling to the fence?

Mr. WEBSTER. It would be most improbable.

Mr. VOLKMER. Walk in cold, you've got a suspicion, somebody has told you about it, you've got a reasonable ground to believe it.

I've just been handed a note that my time is up. The gentleman from Massachusetts, I timed him at 6 minutes and 15 seconds, I just concluded 2 minutes.

Thank you, Mr. Director. My time is up.

Mr. WEBSTER. I hope we won't go back to the days, Mr. Chairman, when our agents walked into bars and ordered glasses of milk. [Laughter.]

Mr. EDWARDS. Mr. Director, when I was an agent, that's all we ever drank. [Laughter.]

Mr. Rodino?

Chairman RODINO. I just want to say thank you, but I will be looking forward to scrutinizing those guidelines, your work rules, and I'd like to leave this statement with you in parting.

Mr. Heymann, I think you ought to consider this, because you have been referring all along to Operation Lobster, and some other sting operations. I can't, for the life of me, reconcile the kind of operation where crime already has been committed as against these other operations which were conducted where public officials were involved, where representations were made by middlemen or purveyors, with the kinds of inducements that we have read about, which would suggest that possibly a Member of Congress could be of help to the district because of what someone might be able to invest in that particular district.

I don't understand how you could analogize one with the other, because in one case, crimes have been committed or a crime has been committed, or an overt act has been done, where the person who is then prepared to commit the crime would have to say that he was accepting stolen goods or hijacking.

That, to me, is a lot different, and that seems to really be the crux of what bothers me of how you proceed with one and proceed with the other which should have, I think, even at the beginning, given you lots of pause as to the consequences. It's entirely a different kind of case. It's entirely a different kind of setting, and one that is fraught with so much peril, that I am wondering whether or not it is being given that careful scrutiny, and that's what I am hoping that we are going to be able to resolve as we go on. As I suggested to the chairman—I think it was well stated by the gentleman from Ohio, Mr. Seiberling—at some time in the future, some of these things may have to be aired in executive session.

Mr. EDWARDS. This will conclude today's hearing. As the chairman of the full Judiciary Committee suggests, we will continue the subject at a future date. We still have a number of questions to ask about undercover operations, and as we pointed out earlier, undercover operations are included in the charter that the subcommittee presently has under consideration.

We thank both Judge Webster and Mr. Heymann for their appearance here today.

Mr. WEBSTER. Thank you, Mr. Chairman.

[Whereupon, at 12:30 p.m., the hearing was adjourned.]

FBI OVERSIGHT

MONDAY, MARCH 10, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2226, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Drinan, and Volkmer.

Also present: Thomas P. Breen, counsel, and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

We are going to continue today the evaluation of the programs of the FBI with regard to their authorization for budgetary funds this coming year.

The Identification Division employs some 3,000 people in the work of servicing State and local governments as well as Federal agencies and contractors.

The National Crime Information Center—NCIC—represents the FBI's efforts to employ modern technology in the handing of criminal justice information.

Both areas of Bureau activity are in constant need of attention because they are supposed to provide timely and vital information to the several agencies. At the witness' statement and the Department's authorization request candidly admits, there are continuing and perhaps increasing problems which must be addressed.

I do not expect to resolve the problems at this hearing, but I believe we can continue to better inform ourselves on the subject and develop the commitment necessary by the Congress and the Department of Justice to deliver the services which these programs under consideration today are meant to provide.

Our witnesses today are Mr. William A. Bayse, Assistant Director, Technical Service Division, accompanied by Conrad S. Banner Inspector-Deputy Assistant Director, Identification Division; L. C. Groover, Inspector-Deputy Assistant Director, Financial Management Branch, Administrative Services Division; Lawrence G. Lawler, Section Chief, National Crime Information Section, Technical Service Division, and John Milton Jones, Chief, Technical Section, Identification Division.

I welcome you here, gentlemen and before you proceed I recognize the gentleman from Massachusetts.

Mr. DRINAN. I have no opening statement, Mr. Chairman.

Mr. EDWARDS. Please proceed.

TESTIMONY OF WILLIAM A. BAYSE, ASSISTANT DIRECTOR, TECHNICAL SERVICE DIVISION, FBI, ACCOMPANIED BY CONRAD S. BANNER, INSPECTOR-DEPUTY ASSISTANT DIRECTOR, IDENTIFICATION DIVISION, FBI; L. C. GROOVER, INSPECTOR-DEPUTY ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT BRANCH, ADMINISTRATIVE SERVICES DIVISION, FBI; LAWRENCE G. LAWLER, SECTION CHIEF, NATIONAL CRIME INFORMATION SECTION, TECHNICAL SERVICE DIVISION, FBI; AND JOHN M. JONES, SECTION CHIEF, TECHNICAL SECTION, IDENTIFICATION DIVISION, FBI

Mr. BAYSE. I have entered a prepared statement for the record. It is rather lengthy, and I would like to give some opening remarks as a synopsis of that statement.

Mr. EDWARDS. Without objection, you may proceed, and your full statement will be put in the record.

[Mr. Bayse's statement follows:]

STATEMENT OF ASSISTANT DIRECTOR WILLIAM A. BAYSE, FEDERAL BUREAU OF INVESTIGATION

We appreciate the opportunity to appear before you today to discuss the FBI's Identification Division and the National Crime Information Center (NCIC).

The Identification Division and its associated resources and the National Crime Information Center represent important major commitments by the FBI to services support of the Criminal Justice Community. For fiscal year 1981, the Identification Division and NCIC represent 10 percent of financial resources requested by the FBI.

The missions and capabilities of these entities are unique in several ways—particularly, in that they make their services constantly available to virtually all law enforcement agencies nationwide.

For purposes of our discussion today, I believe it is useful to cover each one individually to illuminate missions, functions, and services provided and to indicate the level of resources required to operate them.

IDENTIFICATION DIVISION

The FBI's Identification Division has acted as the Nation's repository and clearinghouse for fingerprint records since 1924. The services provided by the Division include fingerprint identification, arrest recordkeeping, posting of wanted and parole/probation notices, latent "crime scene" fingerprint examinations, expert testimony on fingerprint matters, fingerprint training, missing persons location assistance and the identification of amnesia victims and unknown deceased persons. There are over 16,700 users of the Division's services including: federal, state, and and local criminal justice agencies, as well as certain foreign countries, which utilize the Division's services for law enforcement purposes; federal, state and local governmental agencies which utilize the Division's services for employment and licensing purposes; and banking and securities institutions which utilize the Division's services for employee security purposes.

The current operating environment of the Identification Division can be characterized as labor intensive—over 3,000 people are employed to accomplish the mission. While the Division has been able to maintain measurably high standards of quality in a largely manual system of identification, some serious difficulties in personnel turnover and operating costs have been experienced with this large labor force. The turnover rate has averaged 31 percent over the past six years. Moreover, cost of mission performance has been driven up by steadily increasing labor costs.

To address these and other problems, the FBI has pursued several courses of action aimed at near-term relief of instability in the labor force and at ultimate reduction of operating costs.

Several human resources management initiatives have been taken to improve conditions for the work force and to ameliorate the turnover problem.

Flexitime was adopted on a pilot basis for the Division's day force. This action allows over 2,700 employees to select their own eight-hour shifts between the hours of 6:00 a.m., and 6:00 p.m., during the five-day work week.

Four-day work week schedules have been implemented on a pilot basis for the night force. This action allows 550 employees to work a ten-hour shift four times a week.

Entry level for employees has been raised from GS–2 (currently at $8,128 per annum) to GS–3 (currently at $8,952 per annum); furthermore, waiting periods between certain other grades have been reduced.

An accelerated promotion program is in effect from Grade GS–3 through GS–7.

Since the institution of the measures listed above, there has been a slight decrease in resignation rate. Although it is premature to attribute decreased turnover to these actions, employee reaction to them has been decidedly favorable.

Other human resource management measures currently under study include the employment of persons with impaired hearing as fingerprint examiners and the feasibility of relocating the Division to another geographical area where cost-of-living is lower and there is a stable labor base. A decision has already been made to make a much greater use of part-time employees in order to tap another part of the local labor market.

The initiatives outlined above serve as companion activities to a long-term FBI automation program which has been underway for several years to permit controlled evolution to a less costly, capital-intensive operating environment—with specific objectives aimed at price-performance improvements achievable through modern computer technology. This program is entitled the Automated Identification Division System (AIDS).

The main purpose of AIDS is to automate the Division's identification functions—i.e., fingerprint card processing operations—in order to achieve greater processing efficiency and realize personnel and operating cost savings for the Government. Because of the magnitude of the task, AIDS is being developed and implemented over a period of years in three phases, known as AIDS–I, AIDS–II, and AIDS–III. Measurable and demonstrable progress has been achieved to date in this program.

AIDS–I was implemented in August, 1973. This phase involves the automation of personal description and arrest information appearing on fingerprint cards submitted on first offenders, and the updating of such automated records with subsequent arrest and disposition data. There are now over 4.4 million such records in the computerized file and the file is growing at a rate of about 3,000 new first offender records per workday.

AIDS–II was implemented in October, 1979. AIDS–II provides for automated name searching of the computerized arrest record file, as well as enhanced record processing capabilities. It is anticipated that by the end of this fiscal year, AIDS–II will be handling approximately 23 percent of the Division's name-searching operations, with accompanying savings in labor costs and search time. Completion of AIDS–II implementation constitutes a major milestone in program development. This achievement represents joint efforts of the FBI Identification Division, Technical Services Division and private contractors.

AIDS–III, which is to provide for automatic fingerprint searching and matching, is still under development. It is the most difficult, complex, and risky phase of automation since it has required original scientific research as well as the invention and development of special-purpose computer hardware and software to substitute for humans in examining fingerprints. A number of achievements are outlined here for your consideration. Automatic fingerprint reading machines have been developed. These automatic readers are presently being used to convert data in the Division's criminal fingerprint card file to electronic form for computer storage. This three-year effort is scheduled to be completed in September, 1980. A pilot project has been in operation since May, 1979 to test and evaluate capabilities to be included in the ultimate AIDS–III configuration. This pilot project uses a combination of: automatic fingerprint readers; machine-assisted fingerprint classification procedures; and fingerprint matching equipment to demonstrate and permit measurement of effectiveness of this type of automation—in carefully controlled experiments designed to approximate the Identification Division's production operating environment. These pilot tests have provided positive evidence of effectiveness and efficiency of automation of identification functions. A great deal of work remains to bring AIDS–III to fruition in the intensive production environment of the Identification Division.

To support AIDS research, development and implementation the FBI has relied on a combination of private firms, selected government agencies and in-house resources.

Several private contractors have been employed. The primary contractor has been Rockwell International Corporation. This firm has played an important role in the development and implementation of the pilot equipment. The company remains the only United States firm engaged in fingerprint identification research and development specifically oriented to file holdings and workload volumes approaching those of the FBI Identification Division. While a number of technical difficulties have been encountered in this large, complex AIDS program, Rockwell International has satisfactorily fulfilled its contractual obligations.

The National Bureau of Standards (NBS) of the Department of Commerce has furnished substantial research assistance in the challenging area of automated fingerprint matching. Scientific practitioners at NBS remain in support of the program under fiscal year 1981 funding.

The Federal Computer Performance Evaluation and Simulation Center (FEDSIM) of the Department of the Air Force, is under FBI contract to bring its special expertise to measure, evaluate and improve operational performance of the AIDS–II system.

The Jet Propulsion Laboratory (JPL) of the California Institute of Technology is currently under contract to the FBI through the National Aeronautics and Space Administration (NASA) to study independently the technical, operational and economic feasibility of automating selected functions of the Identification Division. This study encompasses the AIDS–III automation design concepts already set forth by Rockwell International as well as alternative system designs to be developed by JPL. This contractual effort is being monitored jointly by FBI and Department of Justice staff personnel. JPL has assembled a competent, multidisciplined study team including physical/engineering scientists, social scientists, computer scientists, operations research/systems analysts, attorneys and cost analysts to examine rigorously the complex of technical, operational and economic variables associated with automation of identification functions. Particular attention is being afforded an in-depth analysis of the conditions under which AIDS must operate in the Identification Division to meet specific performance and reliability objectives. Moreover, substantial survey work has been performed in assessing service user requirements as well as social, political and other trends which could result in significant identification workload variations in the future. We anticipate numerous substantive benefits from this study effort. Of particular importance is detailed documentation on AIDS system life cycle costs to be developed by JPL. The resultant pattern of annual investment and operating costs will be used for FBI financial planning and budgetary projections. All alternative system designs will be tested extensively for sensitivity and responsiveness to dynamic operating conditions and potential workload variations and for adaptability to technological opportunities which may improve price performance throughout the life of the system.

In AIDS, we are looking for a robust system—one which will stand the tests of time and the challenging service demands associated with the FBI's identification mission.

The JPL study is proceeding satisfactorily, although some scheduling changes have been required for the FBI to specify and coordinate study support tasks being performed by Rockwell International. The additional data being captured will assist JPL's independent quantitative analysis. Rockwell International is continuing to work toward providing all necessary information. Useful working documents have been provided by JPL, and a preliminary report is due in August, 1980, to assess the technical, operational and economic feasibility of Rockwell's current AIDS-III design concept. The final report will be submitted by March, 1981.

NATIONAL CRIME INFORMATION CENTER

The National Crime Information Center (NCIC) is a criminal justice information system containing data on wanted persons, missing persons, stolen property, and criminal history records of serious offenders. It also services selected federal, state, and local crime laboratories through the Criminalistics Laboratory Information System, which now contains data used in the identification of firearms, and will be expanded to include an infrared spectro-photometry file.

Criminal justice data enumerated above is submitted by state and local agencies to their state system. The state systems are connected through dedicated telecommunications lines to the NCIC computer maintained by the FBI at its Headquarters in Washington, D.C. When a law enforcement officer wishes to make a

query, for example, to learn if the car has just stopped has been reported stolen, he uses his police radio to make an inquiry of his headquarters. Through a computer terminal, the operator receiving the radio request makes an inquiry of the state system and if a "no record" response is received, the query is then passed automatically to NCIC here in Washington to determine if a record exists in any of the remaining jurisdictions. If a positive response is received, such as a record that the auto was stolen in state "X", the agency requesting the record check then verifies the accuracy and timeliness of this information by contacting the agency which entered the record in NCIC.

The NCIC system became operational in January, 1967, with files on wanted persons and stolen vehicles, articles, guns, and license plates. Additions made since that time: stolen securities in 1968, stolen boats in 1969, criminal histories in 1971, and missing persons in 1975. The volume of messages on the system has grown to just under 300,000 per day and the cost to the FBI of processing each inquiry amounts to less than seven cents. This figure includes all computer and telecommunications costs as well as personnel and related costs for Bureau employees managing and operating the system. There are an estimated 17,000 user terminals accessing NCIC and these users have input into the management of the system through regional representatives. Each region and the judicial, prosecutorial, and corrections segments of the criminal justice community are represented on the NCIC Advisory Policy Board which advises the FBI Director on matters of policy. Day-to-day operations of the system are managed by an FBI Headquarters Section of 108 persons.

Although the system is functioning satisfactorily when its computer hardware is operating properly, we are plagued by an obsolete host computer which has long ago ceased to be reliable. Despite intensive efforts by FBI personnel and those of the firm performing maintenance, the host computer is inoperative on the average of one hour per day. Notwithstanding the best maintenance efforts available, the current NCIC computer is incapable of the operational reliability required to provide continuous availability of the system to its users. When measured against contemporary standards of reliability, this is unacceptable performance which has a directly adverse effect on the efficiency and safety of law enforcement officers. For the past two years we have been working closely with Congressional committees to reverse this situation and I am pleased to report that significant progress is being made. We have just released a request for proposals for a new NCIC communications controller and we are in the final stages of taking an unsolicited proposal for a new host computer and opening it to potential competitors. The proposal which we have received would replace the existing host computer with state-of-the-art equipment at no increased cost to the FBI. In both of these acquisition actions we have worked closely with interested committees of Congress and the General Services Administration. I would particularly like to thank this Subcommittee and its chairman for the encouraging support given our efforts to improve system performance and reliability.

A matter of great concern to us and to you has been the failure of the Computerized Criminal History (CCH) program to gain wide acceptance by the states. In all, fifteen states have joined the system. Four of these have subsequently withdrawn and three more are in the process of doing so. Reasons cited have been costs involved and uncertainty as to the CCH system architecture which eventually will be adopted. The FBI originally envisioned the system as a decentralized one with the states holding the criminal records of their citizens. The FBI was to have maintained records of federal offenders as well as those individuals whose arrest record existed in more than one state (or in one state plus the federal system). Because of a number of factors, it has not been possible to implement the original CCH concept and today the file is completely centralized. That is, the full arrest record of all persons included in the file is maintained by the FBI.

In an attempt to move forward with an acceptable solution to the CCH problem, the Advisory Policy Board established a Subcommittee to explore the concept of an Interstate Identification Index (III) and set up a pilot project to determine its feasibility. Briefly, the III takes those CCH records entered by a state and divides them into two classes: single state offenders and those offenders having an arrest record in that state and other jurisdictions (multi-state offenders). The centralized CCH file continues to hold the record of multi-state offenders and an index, containing only identifying data, of single state offenders. The arrest and post-arrest information on single state offenders is returned to the contributing state to be maintained solely by that state. When the central file receives an inquiry regarding a single state offender, the inquiring agency is advised that a record exists in the named state. It is thereafter up to the inquiring agency to contact,

through a communications medium other than NCIC, the state holding the record to request its contents. The holding state then determines whether or not transmittal of the record to the inquiring state is consistent with its dissemination policy. If consistent, some means other than NCIC is used to transmit the record. Through III, the state regains complete control of its single state offender records. The State of Florida has volunteered to act as the pilot state and a number of other jurisdictions have informally indicated that if the initial test is favorable, they would like to join. If the III concept proves successful for single state offenders, consideration would be given to expanding the concept to include multistate offenders.

The present schedule calls for an initial assessment of the pilot to be made this fall. The pilot program would be followed closely to gather evaluation data such as the number of inquiries made of the Index and the portion of those which were followed up by a request to the record-holding state; the number of requests denied and the reasons therefor; the extent of time delays in the requesting agency receiving a reply and the consequences of such a delay; an assessment of the value of the information as a function of the amount of delay; and extra costs incurred by the record-holding and requesting states occasioned by having to make and answer the inquiry as a separate action (rather than having the response furnished automatically following the initial query).

Collectively, the actions cited above for NCIC equipment and the III study will provide valuable improvements in system reliability and will develop specific evaluative information with regard to CCH decentralization.

These approaches represent interim steps in a long-term solution to problems and issues surrounding the provision of national criminal justice information services. In our judgment, the time has come for a new system life cycle for NCIC. In this regard, we are currently considering with the Departmental staff the expansion of the current Jet Propulsion Laboratory study of AIDS to incorporate NCIC/CCH. Such a study would include in-depth independent analysis of functional requirements and societal issues—including extended treatment of system security, privacy and quality controls. Alternative solutions provided by such a study would necessarily address the national environment in which criminal justice information services would be provided in the future. A study of broad scope and complexity will be require to cover future user requirements along with issues concerning individual rights and privacy and to set forth balanced, feasible cost-effective alternatives for final selection, approval and implementation. A study of this type is necessary to ensure a long-term solution for criminal justice information services. Formulation of the modification to the JPL study is in the preliminary analysis stages. This study amendment is currently unfunded; a supplemental appropriation in FY 80 would be required to get underway this fiscal year.

SUMMARY

The types and quality of identification and information services required by the criminal justice community—with specific provisions for data quality control, and security/privacy safeguards—require a combination of continual management improvement actions, long-range planning and carefully analyzed program developments. Contingent on resource availability, the FBI is prepared to provide leadership and specific initiatives to effect enduring improvements in the areas discussed today.

Mr. BAYSE. We are pleased to have this opportunity to appear before the subcommittee to discuss the FBI Identification Divison and the National Crime Information Center.

The topics today are the Identification Division and the National Crime Information Center.

These two missions of the FBI constitute about 10 percent of our request for funds in fiscal year 1981.

While the personnel and some equipment for both of those are funded under the same budget activity, it would be useful to the subcommittee to discuss them separately because of their unique properties.

I might point out, before I begin the individual discussions, that both involve a large body of users nationwide, and both involve future

planning for complex automation programs, and I will enter information about that as I go along.

The Identification Division has acted as the Nation's repository and clearinghouse for fingerprints and fingerprint records since 1924.

The services provided by this Division include fingerprint identification, recordkeeping, latent or crime scene fingerprinting examinations, expert testimony on fingerprint matters and fingerprint training, among other services.

There are just under 17,000 users of the Division's services. The count we have is 16,700, including Federal, State, and local criminal justice agencies as well as some foreign countries. These agencies utilize the Division's services for law enforcement purposes. The Federal, State, and local government agencies utilize the Division's services for employment and licensing purposes. Banking and security institutions utilize the Division's services for employee security purposes.

The current operating environment of the Identification Division can be characterized as labor intensive. There are over 3,000 people employed to accomplish its mission.

The Division has been able to maintain high standards of quality, but we have had difficulties in personnel turnover in the labor force. The turnover rate has averaged about 3 percent; moreover, the cost of mission performance has been driven up by the cost of personnel due to inflation and labor costs.

To address those problems, the Identification Division has initiated several courses of action. These are human resource management initiatives trying to reduce the turnover and improve conditions for the work force.

I will mention these actions briefly. Flexitime was adopted on a pilot basis, and this allows 2,700 employees to select their own 8-hour shift times between 6 a.m. and 6 p.m. during the 5-day work week. We have the evening shift on a 4-day work week with 10 hours a day a day for 550 employees.

In order to improve our recruiting and retention entry level for employees has been raised one GS grade from two to three. We have reduced the waiting periods between certain other grades so that advancement can be accelerated in order to retain the work force.

An acceleration promotion program is in effect for one job occupation, and that is equivalent to a modified career ladder within the work force.

Since those measures have been instituted there has been a slight decrease in the resignation rate in the work force, and while we believe it is premature to attribute the decreased turnover to these actions, we have had favorable employee reaction to them.

We are contemplating including the employment of persons with impaired hearing as fingerprint examiners and we are also looking carefully at the feasibility of relocating the Identification Division to another geographical area where there is a lower cost of living and where we can retain personnel to perform the mission.

We are looking at ways also—in accordance with the prudent management practices—to improve the current manual system to make it more efficient.

All these initiatives serve as companion activities to a long-term automation program which we view as the ultimate solution for fingerprint identification.

This program has been under way for several years, and we are trying to make a controlled evolution to a capital-intensive operating environment, versus the labor-intensive one we have now. There are specific objectives in this program aimed at price performance improvements for the same effectiveness of mission, as well as other improvements achievable through modern computer technology.

This program is entitled AIDS, that is, the Automated Identification Division System. Its main purpose is to automate selected functions of the Division; that is, the fingerprint card processing operations that are performed now, in order to achieve greater processing efficiency. This efficiency is characterized as more output per unit input of dollars and the realization of personnel and operating cost savings for the Government.

The task of this automation program is very large because of the magnitude of the record base that is maintained by the Division and because of the need to reduce the large number of personnel. The system is being developed through a phased plan.

The phases are titled AIDS I, II, and III, respectively. We have achieved some progress. The first phase was implemented in August 1973. That involved the automation of personnel description and arrest information appearing on fingerprint cards which come into the Identification Division. These are the cards submitted on first offenders.

AIDS II, which was a major milestone in a very complex system, was implemented last October, and it is up and running now.

This phase provides for fast automated name searching of the computerized arrest record file, and enhances our ability to process records and keep audit tracks.

We expect by the end of this year, AIDS II will be handling approximately 23 percent of the Division's name searching operations, and that will save us labor costs and time for searches.

The third phase is the most complex. This part is to provide automatic fingerprint searching and matching. It's still under development. It is difficult and has risk—it's the most risky phase of automation. AIDS III has required a lot of original scientific research, invention, fabrication of special purpose computer hardware and accompanying softwear to substitute for the humans that now do the work.

We have made a number of achievements, and they are worthy of your consideration.

We have developed machines to read fingerprint cards automatically. These readers are presently being used to convert data in the criminal fingerprint card file to electronic form to be used by a computer. This is a 3-year conversion effort, and it will be completed this fall, in September 1980.

This file will then include the criminal records for those of less than 55 years of age. We have a pilot project in use for fingerprint matching, and we have some semiautomatic or machine-assisted capability for classifying fingerprints by type.

We have been experimenting with this equipment and trying to develop measures of effectiveness in order to gain proof-of-principle test results.

We know that the production environment of the Identification Division is very intensive, with about 25,000 cards a day arriving at the Division, so we are operating those pilots so that we have positive evidence that we will get the effectiveness and efficiency that we are seeking in automation for the future production mode.

To support this research, we have employed a combination of private firms and Government agencies as well as our own in-house resources. The chief private contractor to date has been Rockwell International Corp. and this firm has played an important role in the development of our pilot equipment. It remains the only American firm engaged in fingerprint identification R. & D. of the type that will lead to the large volume operations that we have to maintain.

The National Bureau of Standards has been involved in assisting us in the science of automated fingerprint matching: that is the mathematics and the engineering aspects of it

We have used the Federal Computer Performance Evaluation and Simulation Center [Fedsim] of the Department of the Air Force to help improve the operations of the AIDS II system.

The last and very important step in trying to establish the feasibility of this overall program is the use of the Jet Propulsion Laboratory [JPL] of the California Institute of Technology and the National Aeronautics and Space Administration to study independently—independent of our in-house effort and of Rockwell International's effort—the technical, operational and economic feasibility of automating the identification functions. The FBI and the Department of Justice staff personnel have been involved in this study.

JPL has assembled a multidisciplined team of engineering scientists, economists, social scientists, and others, to help develop a rigorous analytical approach to establishing the feasibility of the automation program.

We anticipate major substantive benefits from this study effort, particularly in establishing the cost patterns that will occur over the life cycle of the system, which will be about 10 years or more. We expect to use costs and other information elements from the study for planning and budgeting in the FBI.

All the alternative designs that will be developed by the Jet Propulsion Laboratory will be tested for feasibility and price performance. We are looking for a system that will stand the test of time and the service demand fluctuations that we have experienced over the years and will avoid the technological obsolesence that is prevalent in automation in the Government.

The National Crime Information Center is a criminal justice information system containing data on wanted persons, missing persons, stolen property, and criminal history records of serious offenders.

It services a large number of Federal, State and local agencies as well as crime laboratories.

The criminal justice data contained in this system is submitted by State and local agencies through their State systems to the NCIC computer in the headquarters, FBI, in Washington.

The system became operational initially in January 1967. At that time there were files on wanted persons, stolen vehicles, articles, guns, and license plates. We have made additions since that time in stolen securities, stolen boats, criminal histories and missing persons.

The volume of messages has grown to 300,000 transactions per day to be processed by the system, and the cost of these transactions is about 7 cents apiece to the FBI.

This figure of 7 cents a transaction is a factor derived from the budget requests that we have made, the operating costs that we have had and the budget requests we anticipate in the future. It is pretty stable, and it includes all of our computers and personnel costs, as well as the communications between the States and FBI headquarters.

The system is functioning basically satisfactorily now when this computer hardward is operating properly, but we simply have an obsolete computer system on our hands—particularly the host computer which is over a decade old, and the communications controller equipment which is of the same vintage.

Even with the best maintenance effort of our contractors and our in-house personnel, the current computer is incapable of the operational and reliability required to provide continuous availability of the system to criminal justice users, and we view this performance of the system as unacceptable.

For the past couple of years we have been working closely with congressional committees, with the Justice Department, to reverse this situation, and we have made some significant progress. We have just released request for proposals for a new communications controller, and we are in the final stages of taking an unsolicited proposal from our current computer lessor and initiating a competitive procurement for a new host computer.

These actions would gain the types of reliability and availability that are required for performance of the system's mission.

For instance, the new host computer that we anticipate gaining through this competitive procurement, would give us significantly improved reliability at no cost to the FBI.

Importantly, this subcommittee is one which has been most constructive and supportive in providing advice, constructive criticism, and encouragement in gaining these resources.

I want particularly to thank this subcommittee and its chairman for the encouraging support that you have given in our efforts to improve the system and its reliability.

A matter of concern to you and to us has been the failure of the computerized criminal history program, or CCH, to gain wide acceptance by the States. There have been many reasons cited and participation of the States has fallen from about 15 States to 8.

The reasons cited have been costs involved and uncertainty as to what the CCH configuration ultimately will be. We originally envisioned this system as a partially decentralized one with the States holding criminal records of single State offenders. The FBI was to maintain records on Federal offenders as well as those who had arrests in more than one State.

We have made several attempts and taken several initiatives to move forward with an acceptable solution. The NCIC Advisory Policy Board has established a subcommittee to explore the concept of an interstate identification index, or pointer system, to enable us to decentralize or put back into the States' holdings their single State offender records.

We would continue, at this stage, to hold the multistate offender under this approach. We are in a pilot test status now. We hope to

have an evaluation this fall. The State of Florida has volunteered to act as a pilot State and a number of other jurisdictions have informally shown interest and indicated that if the results of the initial test are favorable, they would like to join.

The actions that we have cited above for NCIC equipment and for this interstate identification index are interim ones, as we see it. We believe it's time for a new system—a new design and a developmental approach to give us a new life cycle for NCIC and its criminal history file.

We are currently considering with the departmental staff an expansion of the previously cited jet propulsion laboratory study to incorporate NCIC and CCH. This would be a complex study, very broad in scope, and covering a number of societal issues such as civil and constitutional rights and privacy, as well as the functional requirements of the users.

We hope to get the expanded study underway this fiscal year and in that case a funding amendment would be required for the fiscal year 1980 budget.

The types and quality of the services that we provide in Identification Division and NCIC are dependent in large part on technology. We are attempting to take specific actions to improve these services in the interim and then in the longer term to bring the best price performance technology to bear on our mission efforts.

We are prepared to provide the leadership and specific initiatives to bring improvements underway.

Mr. Chairman, that concludes my remarks. We welcome your questions, sir.

Mr. EDWARDS. Thank you very much for very useful testimony.

The gentleman from Massachusetts?

Mr. DRINAN. I too want to thank the witness and his colleagues. One of our roles is to try to help you people cut back on expenses.

As I read it, it is now $55 million for this operation, am I correct on that, 3,000 positions?

Mr. BAYSE. For the Identification Division, operating costs.

Mr. DRINAN. I am wondering what great tragedy would befall the Republic if the Congress extended Public Law 29–544 and said after September 30 this year the Justice Department or the FBI is not authorized to give fingerprint checks for federally chartered or insured banking institutions, or for State and local agencies for employment and licensing purposes.

Mr. BAYSE. Mr. Banner, would you discuss that?

Mr. BANNER. The programs for servicing banking institutions and State and local employment licensing agencies are founded in public safety considerations. In regard to the banking industry, the security of their employees to insure that they do not hire——

Mr. DRINAN. The taxpayer doesn't pay for medical checks. If the First National Bank of Washington wants to make sure it has healthy employees, it pays for the tests themselves, so why should they get a security check on the tax break?

Mr. BANNER. I guess that you are offering the suggestion that they should pay for such checks?

Mr. DRINAN. Either that or do it themselves.

Mr. BANNER. If they cannot check the national data base, then they would have to go to all 50 States to determine whether or not a person has a record.

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Mr. DRINAN. This is a suggestion that I brought up last time. I want to know whether it is a constructive suggestion or not. I want to be able to help in expediting the work of the agency.

Mr. BANNER. Well, sir, in having a charge for such services, we do not see where we would really become more efficient. In fact we would see that we would have to have an accounting staff at the FBI.

The banking industry would have to account for such checks and the cost of administering the checks, plus the actual charges would fall upon the depositors of the banks.

Mr. DRINAN. Better that they pay then we, the taxpayers, pay.

Mr. BANNER. Well, I would submit sir, the depositors are taxpayers in most instances.

Mr. DRINAN. All right, sir. Executive Order 10450 requires that every applicant for employment with the Federal Government shall be checked through the fingerprint files of the FBI.

Is that really necessary? Somebody wants to sweep the floor of a Federal building in Pittsfield, Mass., do we have to have that? What great evil would fall if we in the Congress repealed that Executive order?

Mr. BANNER. Well, I am not prepared to state the full necessity of such background checks. I know that in regard to sensitive positions. I would highly recommend a check of the national criminal arrest file. As for other jobs, it would be dependent upon what type of building required security et cetera; but those were considerations that were made by another authority not the FBI and it was deemed that such checks were necessary at that time.

Perhaps it is time for a review, however.

Mr. BAYSE. One consideration in the banking area would be the fact that the banks are federally insured and require the security checks in the interest of the Federal Government.

Mr. DRINAN. All I am saying is that the bank shouldn't have a free lunch. Sir, in this drive right now to cut back on Government spending, it seems to me it's the role of an oversight committee like this to suggest ways in which expenses could be cut back, and on Federal employees, I think it is thoroughly rational to say only people going into sensitive positions should be required to have their fingerprints checked, and that would relieve the FBI at least a little bit in its identification.

I see the witness is shaking his head; that this is a constructive suggestion. Why can't we change the Executive order and say only for those in sensitive positions, should the requirement of a fingerprint check be imposed by the FBI.

Mr. BAYSE. I would suggest that we study that and analyze the number of sensitive positions and see what types of benefits it would return to us in terms of costs.

Mr. DRINAN. Thank you very much.

Mr. EDWARDS. Would the gentleman yield?

Mr. DRINAN. Yes.

Mr. EDWARDS. What percent would be hit where agencies ask for criminal records; how many records do you find where people have felonies? You are talking about felonies and misdemeanors; isn't that correct?

Mr. BANNER. We are talking about serious offenses. Are we still in the area of employment and licensing, Congressman?

Mr. EDWARDS. No; we are right now on Federal employment.

Mr. BANNER. That would be a very low percentage, somewhere around 5 percent or around that area.

Mr. EDWARDS. Those people just don't get jobs, or it is up to the agency to make up their mind?

Mr. BANNER. It's up to the agency to review the seriousness of the arrest record.

Mr. DRINAN. When they are applying for a Federal position, if it goes through the Civil Service Commission, they have to say do you have a criminal record or not, and if they say no, the FBI still goes through with the fingerprint check, but I can't believe 5 percent still have a felony record having said that they don't have one.

I yield back the balance of my time.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. On the matter of the banks that the gentleman from Massachusetts brought up, if you would, I would like you to furnish us with approximately the last fiscal year, how many applications you had for that year. If you can't do it now, send it by letter on the financial institutions.

Mr. BANNER. In regard to the banks, it was about 325,000, Congressman.

Mr. VOLKMER. Do you have to send back a reply?

Mr. BANNER. We send back a "no-record" response or a copy of the arrest record on the person involved.

Mr. VOLKMER. If we did charge each one of them $1 per check, or $2 or $5, that would have to be accounted for, but as far as sending back the mail back and forth, you are going to have to do that anyway?

Mr. BANNER. Yes, sir.

Mr. VOLKMER. Why don't you figure out for me what it would cost if we did have a charge. How many more people we are going to have to put on in order to handle the accounting part of it rather than dispose of it; rather than say no to any of it.

I would like to look at the total picture, that if we did decide to make a charge, whether that charge, no matter what it is, you are still going to have basically the accounting procedures. I would like to know what that would run.

Mr. BANNER. Yes, sir.

[The information follows:]

This matter is still under study. The results will be furnished later by a separate written communication.

[The following information was subsequently submitted by the FBI:]

NUMBER AND COST OF PERSONNEL NEEDED TO HANDLE ACCOUNTABILITY IF FEDERALLY INSURED BANKING INSTITUTIONS ARE CHARGED FOR PROCESSING FINGERPRINT CARD SUBMISSIONS

There were 325,113 fingerprint cards submitted to the FBI Identification Division by federally insured banking institutions during Fiscal Year 1979. If a fee were to be imposed for processing the submissions, it would require four employees to handle the accountability of funds.

The Identification Division would require three persons in grade GS–5 to handle the following duties: (1) record receipts from each bank contributor; (2) reconcile the funds with the number of cards submitted and resolve discrepancies; (3) prepare documents for transmittal of funds to the Budget and Accounting Section

Administrative Services Division; (4) return rejected cards and furnish instructions for resubmission; (5) review resubmitted cards to verify payment; and (6) handle inquiries concerning resubmissions.

The Budget and Accounting Section, Administrative Services Division, would require one person in grade GS–7 to handle the financial aspects of the accounting.

The personnel costs for the four employees, including employee overhead costs, are estimated to be $60,043 per year at current salary levels. This figure is broken down as follows:

Type of cost	Cost per employee	Extended cost
3 GS–5 employees	$11,243	$33,729
3 employee overhead costs	2,923	8,769
1 GS–7 employee	13,925	13,925
1 employee overhead costs	3,620	3,620
Total		60,043

Mr. VOLKMER. The other thing, you mention on page 4 the feasibility of relocating the Division to another geographical area where the cost of living is lower and there is a stable labor base. What studies have been done on that?

Mr. BANNER. Our Office of Planning and Evaluation did a preliminary feasibility study to determine whether or not there were any legislative or other obvious barriers to such a move, and there was found to be none.

We are now forming a taskforce of representatives from divisions that would be affected; for instance, the Personnel Division and budget people of the FBI, besides our own Identification Division representatives, who will get together and study the situation further.

Mr. VOLKMER. In other words——

Mr. BANNER. It is still in the planning process, and it would be years away if we did plan to move, sir.

Mr. VOLKMER. Now, this is in the AIDS, right, or the whole division?

Mr. BANNER. We are talking about the whole division, sir.

Mr. VOLKMER. The whole Identification Division, sir?

Mr. BANNER. Yes, sir.

Mr. VOLKMER. Now, you say you cannot conduct the JPL study on the possibility of combining everything without a supplemental, at least not this fiscal year; correct?

Mr. BAYSE. That is correct.

Mr. VOLKMER. If we don't give you a supplemental, which I doubt very much we will do under all of the constraints that we have right now, would you be able to start with the present budget, would you be able to start it next year?

Mr. BAYSE. We would again have to amend the budget under consideration now, the fiscal year 1981 budget.

Mr. VOLKMER. How much are you asking for to do that?

Mr. BAYSE. $2 million.

Mr. VOLKMER. To do a combination study, $2 million?

Mr. BAYSE. Yes, sir. This study would, of course, measure workload requirements for now and the future in all 50 States, and at least a statistically significant sample of local users, and we believe a substantial part of the study would be an analysis of social issues concerning privacy which would indicate the security requirement. Also,

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we would expect to have quite a bit of participation through the Justice Department staff on civil and constitutional rights and other interests.

Mr. VOLKMER. Right now you are trying to improve, and you still don't have the total technology to complete the AIDS program; is that correct, if I read your statement properly.

Mr. BAYSE. We are still working in the developmental phases and in technology areas in the AIDS program.

Mr. VOLKMER. Do you need new hardware for NCIC?

Mr. BAYSE. Yes, sir.

Mr. VOLKMER. About how much is that hardware going to cost?

Mr. BAYSE. The current unsolicited offering will come in under our current lease cost. If we are able to acquire that hardware, it will be at no additional cost to the FBI.

Mr. VOLKMER. That will fit in with the rest of the software?

Mr. BAYSE. Yes, sir; we are also concerned about the software and that is why we think, we need the studies to improve the capability of the whole NCIC system and to address some of the issues that have surfaced in the area of operational availability performance. Moreover, we need to modernize the system in line with future requirements and the societal environment in which we are going to be operating over the next 10 years.

Mr. VOLKMER. It is awfully hard for me; one of my problems is that your AIDS program, you got a separate study and your ongoing you are directing to Rockwell in one direction, right?

Mr. BAYSE. Yes, sir.

Mr. VOLKMER. Your NCIC is going to be by a separate contract with somebody else, or maybe with Rockwell but depending on who the bid is, correct?

Mr. BAYSE. Rockwell is the research and development contractor now. It's plausible that we would change that somewhere downstream when we are ready to install the new system—the AIDS system and the NCIC.

Mr. VOLKMER. You don't have anybody on NCIC right now?

Mr. BAYSE. That is an in-house operation.

Mr. VOLKMER. We don't know who will end up with that hardware?

Mr. BAYSE. The hardware will be acquired competitively, and any future system would also be a competitive procurement for hardware.

Mr. VOLKMER. With this study that you propose by JPL to require a combination operation, that is what we are talking about?

Mr. BAYSE. It would analyse the interface between AIDS and NCIC/CCH and look for an integrated solution, yes, sir.

Mr. VOLKMER. Now, does that envision further down the line using possibly totally new hardware?

Mr. BAYSE. As far as AIDS is concerned, we would be building on some of the equipment we already have in the pilot mode. As far as NCIC is concerned, if we get an interim upgrade of hardware, it would be a candidate for the future system.

The hardware configuration would depend on the operating mode in which we would perform the functions.

Mr. VOLKMER. What I am a little concerned with is that you will within the next year have new hardware for the NCIC on contract coming in?

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Mr. BAYSE. Yes, sir.

Mr. VOLKMER. You are working possibly in another direction with different hardware on the AIDS program and 2 years down the line JPL comes in and says wash it out and start with this.

Mr. BAYSE. They would have to look at a base case of the current system and what parts of it could be used in the future, and we would choose the most cost-effective solution. If the solution would include the current hardware, we would use it. We believe the requirements for the future NCIC and AIDS system combined would exceed what we have now for NCIC.

The hardware we will acquire in the near future is simply for reliability improvements so the system won't fail every day and for availability to the users on a timely basis.

Mr. VOLKMER. All right; OK. I would like to go back.

When will your relocation study possibly be completed?

Mr. BANNER. We don't have any firm fixed time for the completion of it.

We would hope it would be done within the next year, and then it will go on to another phase. These are all in-house studies at this time.

Mr. VOLKMER. When you complete it, and you have some idea what it looks like and whether it is feasible or not, Mr. Chairman, I request that we have a hearing on it.

Mr. EDWARDS. We certainly will.

Mr. VOLKMER. Thank you very much.

Mr. EDWARDS. Let's talk for a moment about the NCIC.

The most important part of the NCIC and the reason it was set up to begin with was to get that information to the police about wanted people, stolen cars, stolen property, and so forth; correct, get that out there fast so that the police could do their work better throughout the United States and, two, the NCIC has added an additional burden, missing persons, and that is all correct.

The complaints that we were getting last year are from different parts of the United States, policy agencies, to the effect that the NCIC had downtime. Some departments would stop sending information to the NCIC, because it was down for 2, 3, or 4 hours at a time.

Has that downtime been cured?

Mr. BAYSE. The equipment that we are acquiring with the communications controller, which was approved by your subcommittee and by the Senate, and the new action that we have to acquire a new host computer with both pieces of equipment residing here in Washington in our headquarters, would give us measurably greater ability to provide services reliably and faster.

Right now the same equipment in place. We received the approval from the Congress to acquire new equipment. It takes some time to do so in the Federal acquistion process. When we get the communications and host computer equipment in, we expect reliability on the order of 96 to 99 percent, and right now it is running quite a bit less than that, and the failure rate is about 1 per-day.

We have exhausted the maintenance capability to provide greater reliability.

Mr. EDWARDS. You should concentrate on getting that front equipment that we were talking about last year, so that the system can

become 96 or 98 percent trustworthy. Don't you think that is really taking too long? I know that there was a holdup in the other body and in the authorization, but that was all last year.

Mr. BAYSE. It is in the Federal procurement process, the competitive procurement, and it will take some time.

Mr. EDWARDS. That does not include the new computer?

Mr. BAYSE. The new host computer will follow right on the coattails of the front-end equipment and we expect that to be implemented in a matter of days when we have the procurement action completed.

Mr. EDWARDS. Well, that is very important. Anything you can do to get that equipment we want you to do it, and it is not necessary to keep writing letters about it. Get it bought and get it on line, because it has been authorized for a number of months.

Mr. BAYSE. Yes, sir; and we are pushing it with all possible haste through the procurement process.

Mr. EDWARDS. Go to Fingerprints, to Identification for the moment, and as I visualize the office over there you have got the Identification Division in one place and NCIC in another place, correct; two different crews?

Mr. BAYSE. Yes, sir.

Mr. EDWARDS. But the NCIC also has some computerized criminal histories?

Mr. BAYSE. Yes, sir.

Mr. EDWARDS. You got duplication, and I imagine a certain amount of competitiveness there?

Mr. BAYSE. There is a certain amount of duplication.

Mr. EDWARDS. I am sure you are all acquainted with the March 6, 1978 booklet entitled, Department of Justice, no representative viewpoints of State criminal justice officials regarding the need for nationwide criminal justice information interchange facilities.

Do you subscribe to the conclusions in that?

Mr. BAYSE. I will ask Mr. Lawler to comment on that.

Mr. LAWLER. We subscribe to the majority of the conclusions on it. It calls for a totally decentralized system with the computerized history, the single-State and multi-State offender. We are going into a pilot project on the single-State offender decentralization. Once that project is done, there will be a study done on the decentralization of the multi-State offenders.

We wanted to go very slowly since we have been operating the system for about 9 years and have not had that great backing from the States. We want to make sure that everything we do is feasible economically and operationally before we go on to the next step.

Mr. EDWARDS. The test you are referring to is through the State of Florida?

Mr. LAWLER. Yes, sir; it is.

Mr. EDWARDS. You are going to give them your full cooperation?

Mr. LAWLER. Without a doubt.

Mr. EDWARDS. We have had some reservations expressed insofar as the Bureau's cooperation, not by the State of Florida but just people we have talked to that this is in some view a threat to an immense system, an immense system with jobs and careers, and identification won't be as big a deal if there is decentralization.

Mr. LAWLER. It will not have as much record storage in the system for sure.

Mr. EDWARDS. You would not have to bus people in from Baltimore for jobs, would you?

Mr. BANNER. That is true, Congressman, and I wish to assure you and the members of the subcommittee that the Identification Division is not in the business of perpetuating itself for the purpose of maintaining jobs or positions or, as it were, an empire.

We are willing to cooperate in any way we can to come up with a really viable decentralized system. Our only concern is that we proceed very cautiously in view of the past problems that we have experienced in trying to go to a decentralized system in the past.

I am referring to the experience of the computerized criminal history program wherein up to now 15 States have participated and 7 have dropped out.

Mr. EDWARDS. Yes; but you are talking about two different things. The booklet I referred to does not refer to computerized criminal histories. It refers to an index where one State will ask of the index where the records are stored, and then that State makes the request to another State for most of the records.

You don't get it over the NCIC.

Mr. BANNER. Yes, sir; there are certainly differences, Congressman, as you point out. However, the original plan for the computerized criminal history program also envisioned decentralized records, those of the single-State offenders, approximately 70 percent of the national data base. That is all I was referring to, sir.

Mr. EDWARDS. Well, it seems to me that your enthusiasm might be less then you described presently as I read the excerpt from the Department of Justice fiscal year 1981 authorization request.

On page 95 it talks about long-range goals, provide fingerprint and identification—related services to Federal, State, and local criminal justice agencies as well as other authorized agencies and entities, and so forth.

On page 96, it refers to the alternative by which this program could be achieved to require the users of the identification services to use State identification bureaus.

This is not a satisfactory alternative in that many State bureaus are not adequately equipped or funded to handle such a volume of work. In addition, State bureau records are not complete, and it would require a check of the 50 State bureaus to duplicate the coverage of one inquiry to the FBI Identification Division's national repository, whose records have been amassed through the cooperative efforts of Federal, State, and local contributors over the past 55 years.

Mr. BANNER. Yes, sir; what we were referring to in that language was the current status of the States in their development, which is very uneven. As we proceed with the III concept we are going to be going to States with capability on a step-by-step basis and assure that each step we take is on firm ground.

With regard to the langauge about having to make more than a single inquiry to determine whether or not a person has a record in another jurisdiction, we are referring to the pointer concept aspect of the III. The identification part of III calls for a centralized fingerprint identification capability, and that would be the Identification Division.

When we are talking about decentralization, however, we are talking about the location of the actual arrest records, and that is the area of true decentralization, sir, and we are in favor of that.

Mr. EDWARDS. Many more studies have to be made if the users want a decentralized system. The records from NCIC, they would like you to move ahead to a decentralized system with the index in Washington.

One of the problems with the index in Washington under the control of the FBI is that there are strong objections on privacy grounds and others to having the FBI control the message which would be entailed when Boston asks the index, does this guy have a criminal record, and the ideal situation would be to switch it to San Jose, Calif., without even looking at it, and San Jose, Calif., or California laws would respond directly through the computer back to Boston.

Isn't that the ideal situation?

Mr. BANNER. Yes, sir.

Mr. EDWARDS. That involves message switching?

Mr. LAWLER. We have addressed that. NCIC message switching was in the original design in the early stages of the development of CCH, and no alternative really existed. During this period some concern had been expressed regarding FBI control of the communications system.

There is an alternative communications system in existence called the national law enforcement telecommunications system. This private corporation is a message switcher located in Phoenix, Ariz., run by representatives of the 50 States and a board of directors.

NLETS has scheduled a system upgrade in August, and when accomplished we believe they will have the capability of switching the many messages that we now handle without message switching.

With the decentralization of records, it is important, for example, for the Boston Police Department to have the capability to communication with the San Jose Police Department. NLETS will provide this capability.

In developing the decentralized program, the States have asked us to perform a study to address four areas: operational, fiscal, managerial, and political. The operational, will it simply work?

Fiscal: Am I going to have to put more people in my police departments at the State level to handle the increased inquiries that we now are handing out on a centralized system?

Managerial: Who is going to manage the system and set standards of record data quality when the Boston Police Department is talking to the San Jose Police Department directly over what is known as a transparent communication line?

Who is going to tell San Jose that you must have these minimum data developments? Since the FBI is no longer involved we might be shy a manager for this new system and the political consideration is simple. We developed a system early on in 1971 that included message switching that became controversial politically and, as a result, development of the system was slow.

We are looking to see if there are any politically controversial items in the III implementation. The best way we felt we could test or theoretically come up with these four impacts would be to actually put up a pilot project and see if it works on a very limited basis with a very advanced state.

We are really going to use the best case right now. We will run the pilot project hopefuly between June and September, evaluate it after September, and if the evaluation says yes, we know we can do it with one State, then we will add an additional State.

We have more complex considerations in the development of the III. At some point the volume is going to be what will cause problems. We are establishing evaluation criteria and when States indicate to us that they are ready, willing, and able to join the system we will address the impact of the participation of additional States.

Mr. EDWARDS. Very good.

Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

On another point I commend the Division for complying with the decision of *Tarlton* v. *Saxbe* which orders the expungement of various records and, as I recall, that court decision required the expungement on a court-ordered schedule.

Is the division up to date in complying with the court ordered schedule?

Mr. BANNER. Yes, sir. As of July 1, 1979, we were scheduled to be removing all nonserious offenses from the arrest records we are disseminating and we have met that milestone. It is a problem, however, Congressman.

This is a very difficult task. It requires the retyping of the arrest records where there is a situation where an arrest will appear between two others and we have to remove the middle one. This has been quite a burden to us, but we are meeting our responsibility.

Mr. DRINAN. I am very happy for that and I commend you.

On another point, I also serve on the Government Operations Subcommittee of Richardson Preyer and I will have to excuse myself after this dialog because he has a hearing and he asked the GAO for a report which was issued last year.

I was critical of the FBI's maintenance of two systems of records concerning criminal offenders. It may be that you answered this already, but I wonder how would you respond to the recommendations of that GAO study last year?.

Mr. BAYSE. Concerning the duplication of records, we are taking some actions now to develop some special computer software to eliminate, to the extent feasible within the system, the way it operates now with the current hardware and software about 25 percent of the duplication. There were numerous other recommendations. Is that the one you are talking about, the duplication?

Mr. DRINAN. But you people are seeking to comply with those various recommendations?

Mr. BAYSE. Yes, sir, to the extent that they apply to the current environment.

Mr. DRINAN. Thank you for your testimony.

Mr. LAWLER. I might point out the AIDS system was developed totally compatible to the CCH system so that they could be merged down the road. Because of the developmental stages of the AIDS system 5 years ago it was not feasible to merge the two and it is just now getting to the point where it is feasible to merge the two and computer programing is being developed right now so that the long-range system will avoid any duplication.

Mr. DRINAN. That is very good news and I commend you and thank you and I yield back the balance of my time.

No further questions.

Mr. EDWARDS. Isn't the AIDS system really designed for Identification to keep the centralized system and to make the centralized

system work, or is it to help the States and whatever is left in identification after there is decentralization?

Mr. BANNER. AIDS has been developed since the beginning, and that has been about 1970, 1971, with the view that there would be a decentralized Federal/State system. At that time it would have been the CCH system. Now it would be III. The compatibility that we have built in has been in support of the decentralized system and in all concepts of decentralization there has been a provision made wherein, as the States assume the responsibility for their own arrest recordkeeping, the Identification Division would phase out the corresponding responsibility for that State.

It has not taken place to date yet, however, because of the problems we have experienced in CCH, but we would see in the future that such a phaseout would occur.

Mr. EDWARDS. Is phase III going to work? How much money have you spent on phase III on this machine through Rockwell and other contractors?

Mr. BANNER. Congressman, we have expended approximately $20 million in all of the studies, the research and development, equipment purchases, everything in regard to outside contractors.

We do not have a figure in regard to our own personnel effort. We feel that the money has been well spent in regard to all of the equipment and the number of records we have amassed to date.

For instance, mention was made that automatic fingerprint-reading equipment was developed. We developed a prototype system and then we had built five production models and they have been employed in the task of converting our criminal arrest fingerprint file. Over 11 million fingerprint cards have been converted to date. There was mention of the fact that since 1973 we have been computerizing the descriptive and arrest information from first offender arrest cards. There are now over 4 million such records in the file and we have begun automatic name searching of that file.

We have developed other types of prototype equipment including semiautomatic fingerprint reading equipment, and special purpose computer equipment which takes the data generated by the automatic fingerprint reader equipment and automatically compares it with other such data.

We are hoping to get out of the JPL study a figure as to the additional amount of money that will be required to complete the AID system.

We call the complete system AIDS–III because we will be adding automated fingerprint searching to it.

Right now people are talking in the ballpark of about an additional $50 million.

Mr. MCKAY. Is the heart of the system a computer that can classify a set of fingerprints?

Mr. BANNER. The heart of the system involves the actual reading or scanning of the fingerprints that appear on fingerprint cards, putting them into computerized form, then having various types of computer equipment, usually special purpose computer equipment, compare them with previously stored data.

The initial implementation of the AIDS–III concept, automatic fingerprint searching, will involve semiautomatic classification.

A human being will classify the fingerprint patterns, but the computer will do the comparisons.

Mr. BAYSE. I too will add a little bit to that, Mr. Chairman.

We see the eventual implementation of AIDS–III as involving automatic classification, sort of by definition. That has been one of the toughest and riskiest parts of the research. The Jet Propulsion Lab will give us a definitive statement of the long-term feasibility, which was your original question I think, and it was just this question about feasibility that prompted our director to commission this study independently from the current developmental efforts.

Mr. EDWARDS. I am sure the problem with both the NCIC and identification bothers you as much as it does us and probably a lot more.

Actually the identification hasn't changed since I was an agent 40 years ago very much. Stuff still comes in by mail and laboriously is classified by people sitting at desks all night and then mailed out. They get it about 1 month later.

Mr. BANNER. Yes, sir.

Mr. EDWARDS. That is not good enough.

Mr. BANNER. No.

Mr. EDWARDS. Nor is it good enough to have the NCIC with down time. So those two targets we have to reach.

Counsel?

Mr. BREEN. On your statement that JPL has produced some working documents so far, are there any positive results or working papers you can tell us about?

Mr. BAYSE. The working papers we have available now reflect the background research that they have done in analyzing the functions of the Identification Division and the processes associated with them.

One of the positive results is that they expect to give us a detailed report within a week or two to help improve some of the manual operations that currently exist. They did an industrial engineering study of the manual aspects of the fingerprint processing. Some of the other areas are in the area of technological feasibility, that the state of the art probably would support the concept and the activities that we are trying to implement in AIDS–III, but we have asked them to go beyond that, well beyond that, to surface some alternatives to the current design.

Mr. BREEN. Did the Bureau do a feasibility study before the AIDS–III concept was adopted as a funded program?

Mr. BAYSE. Yes; that study was done by the contractor, Rockwell International.

Mr. BREEN. And that is in the hands of the JPL, I assume?

Mr. BAYSE. Yes.

Mr. BREEN. And they are reevaluating that in light of today's technology and the conditions of the Bureau?

Mr. BAYSE. Yes.

Mr. BREEN. Has Rockwell developed fingerprint reading machines for any other law enforcement agencies besides yourself?

Mr. BANNER. Yes; they have. They are scaled down models, however. There is one that is in the Montgomery County—Prince Georges County area, locally here.

Mr. BREEN. Have they delivered some to Canada?

Mr. BANNER. They have delivered equipment also to the RCMP at Ottawa.

Mr. BREEN. Is that similar to the Montgomery County equipment?

Mr. BANNER. It is similar, but larger.

Mr. BREEN. Is it working?

Mr. BANNER. I do not have performance information in regard to it. I assume it is working.

Mr. BREEN. Do you have unofficial contact with those people?

Mr. BANNER. Yes; we do, sir.

Mr. BREEN. And what are the results? Did you hear from them?

Mr. BANNER. I really wouldn't want to speculate. Maybe John Jones would know.

Mr. JONES. They have a different problem than we had in that their file was put on videotape whereas ours is in hard copy form. They have had to go back and reread their own files. They had hired Rockwell to do it at first and then they decided that it would be better if they went back and reread it themselves.

They have not put out what we call a user report as yet, but preliminary examination shows that Mr. Chris Tiller, who is heading this up at RCMP, is satisfied with the equipment to date.

Mr. BREEN. In this work a lot of research and development has gone into these machines to read the prints, that is right. Have there been any advances in the studies of ink or the use of paper, or has that remained a constant factor all through the years that fingerprints have been used as a device to identify people?

Mr. BANNER. There have been many studies conducted by the FBI, by Project Search, and other groups into finding a substitute for the printer's ink/card approach to taking fingerprints.

The big problem is cost effectiveness. It is very cost effective to use printer's ink and a blank card. When you get into chemical approaches to taking fingerprints, or photographic, or other approaches, the costs skyrocket and therefore there has been no improvement so far, sir.

Mr. BREEN. But people are still thinking about it and working on it to some extent?

Mr. BANNER. Yes, sir. At the National Bureau of Standards, our colleagues have been looking into it for years and have been following the state of the art along with us and studies are ongoing, but there are still no breakthroughs.

Mr. BREEN. Thank you.

You indicated a lot of discretionary fingerprint work is done for agencies as a result of laws that are passed in the States for licensing and other purposes. Do you exercise your discretion or do you have any means to exercise your discretion and not classify fingerprints from certain States or for certain purposes?

Mr. BANNER. In general, we leave it up to the State to determine whether or not the service should be given. This is done by requiring the State to pass a State law so that the State legislature will look at the situation and determine whether or not the service is needed.

We do review it. The Attorney General has the right of review and, if there is an overriding public policy against such a service, he can turn it down. We exercise that discretion for him.

Mr. BREEN. Could you provide the committee with a list of the States and then a list of the occupations or purposes for which you will classify fingerprints as of the most recent date that is available?

Mr. BANNER. Yes, sir.

[The information follows:]

Fiscal Year 1979 Figures* Relating to State and Local Fingerprint Card Submissions for Employment or Licensing Purposes Approved Under Public Law 92-544

	State	Civil
1.	Alabama	2,706
2.	Alaska	2,389
3.	Arizona	46,855
4.	Arkansas	4,030
5.	California	205,036
6.	Colorado	17,680
7.	Connecticut	8,451
8.	Delaware	3,350
9.	Washington, D. C.	12,403
10.	Florida	89,891
11.	Georgia	35,997
12.	Hawaii	453
13.	Idaho	8,070
14.	Indiana	3,148
15.	Illinois	38,159
16.	Iowa	2,764
17.	Kansas	1,100
18.	Kentucky	1,764
19.	Louisiana	3,655
20.	Maine	598
21.	Maryland	22,754
22.	Massachusetts	2,815
23.	Michigan	6,187
24.	Minnesota	615
25.	Mississippi	1,080
26.	Missouri	8,919
27.	Montana	502
28.	Nebraska	951
29.	Nevada	38,832
30.	New Hampshire	1,320
31.	New Jersey	74,953
32.	New Mexico	6,214
33.	New York	91,051
34.	North Carolina	13,436

* Figures include submissions relating to criminal justice agency employment.

	State	Civil
35.	North Dakota	67
36.	Ohio	21,887
37.	Oklahoma	2,829
38.	Oregon	9,397
39.	Pennsylvania	14,709
40.	Rhode Island	1,010
41.	South Carolina	11,448
42.	South Dakota	350
43.	Tennessee	7,656
44.	Texas	25,219
45.	Utah	1,008
46.	Vermont	1,308
47.	Virginia	13,043
48.	Washington	39,972
49.	West Virginia	822
50.	Wisconsin	3,704
51.	Wyoming	227
	Total	904,704

FBI IDENTIFICATION DIVISION'S
NON-FEDERAL APPLICANT FINGERPRINT PROGRAM

LISTING OF STATE STATUTES
APPROVED UNDER PUBLIC LAW 92-544

Alabama

Central Agency - Bureau of Identification
Identification Unit
Montgomery

No State Statute

Alaska

Central Agency - Department of Public Safety
Juneau

1. Collection Agency Operator's License (AS 08.24.120)

2. School Bus Driver Permit (AS 13.08.015)

3. Armed Guards (AS 23.10.025)

4. Insurance Agents, Brokers, Solicitors & Adjusters
(Chapter 23, 3AAC23.010)

Arizona

Central Agency - Department of Public Safety, Phoenix

1. Arizona Revised Statute (ARS 41-1750) - Statute permits local non-law enforcement agencies to require fingerprinting by rule, regulation, or ordinance applicable to employment and licensing purposes. Although the statute represents a broad delegation of rule making power to local agencies, challenges claiming over-delegation appear to be without foundation, particularly in view of the requirement in the statute that the local non-law enforcement agencies channel their exchange requests through a central State dissemination unit. (Letter from Office of Legal Counsel, U. S. Department of Justice, 6/14/72)

   A. Applicants for admission to the State Bar of Arizona (Rules of the Supreme Court: 28-C-5)

   B. State Insurance Department Applicants (Regulation R-4-14-705)

   C. City of Glendale only (County Ordinance)
   City employment - Sec 2-6 & 2-9
   Peddler - Sec 18-24
   Private Detective - Sec 18-24
   Solicitor or canvasser - Sec 18-27
   Taxicab operators - Sec 18-30
   Transient, itinerant or traveling merchants - Sec 18-31
   Massage parlor, operator & attendant - Sec - 18-32.2

2. Preadoption Certificate (ARS 8-105)

3. Applicants for licenses from the Alcoholic Beverages Board (ARS 4-202)

4. Private Investigation Services Applicants (ARS 32-2411)

5. Real Estate License (ARS 32-2130)

6. State Welfare Department: Applicants for Certification, Licenses, and Employees (ARS 46-141)

7. State Banking Department: Applicants for permits including Organizers, Directors, Officers of Banks and Savings and Loan Associations (ARS 6-123)

8. Securities Indusry Personnel (PL 94-29 exemption)

Arkansas

Central Agency - State Police, Little Rock, Arkansas

1. Securities Industry Employees (PL 94-29 exemption)
2. Liquor License Applicants (ARS 48-311 and 48-314)
3. Private Investigators or Detectives (Act 447, Section 8(1)(c))
4. Bail Bondsmen (ARS 43-737)
5. Application for Trade, Occupational or Professional License e.g., Chauffeur License (ARS 75-313)

California

Central Agency - Department of Justice
Bureau of Identification
Sacramento

1. Civil Defense Volunteers (M & V. C 1518.4)

2. Employees of School District (Educ C 13588)

3. Employees of Collection Agencies (B & P C 6894.4)

4. Private Detectives (B & P C 7551) Private Investigators

5. Architects (B & P C 5577)

6. Barbers (B & P C 6576)

7. Building Designers (B & P C 5577)

8. Cemetery Licenses (B & P C 9727.2)

9. Child Care and Home Finding Agencies & Foster Homes (B & P C 16018)
Adult Care Homes & Facilities (SEC. 1.3, Sect. 1522 H & S C)
a) Small Family Home-Children
b) Small Family Home-Adults
c) Large Family Home-Children
d) Large Family Home-Adults
e) Family Day Home-Children
f) Small Family Day Home-Adults
g) Large Family Day Home-Adults
h) Group Home-Children
i) Group Home-Adults
j) Social Rehab. Facility
k) Day Nursery
l) Day Care Center Adults
m) Social Rehab. Center
n) Foster Family Home
o) Homefinding Agency

10. Chiropractors (B & P C 1000-10)

11. Clinical Laboratory Technologists (B & P C 1321)

12. Concealed Weapon Licenses (Penal C 12052)

13. Collection Agencies Licenses (B & P C 6886.1)

14. Contractors (B & P C 7123/7124)

15. Cosmetologists (B & P C 7431)

16. Dentists (B & P C 1679/1680)

17. Doctors (B & P C 2383)

California continued:

18. Dry Cleaners (B & P C 7705)
19. Funeral Directors (B & P C 7705)
20. Trainers or Sellers of Guide Dogs for the Blind (B & P C 7211.9)
21. Land Surveyors (B & P C 8780)
22. Landscapers (B & P C 5675)
23. Liquor Licensees (B & P C 24200)
24. Nurses, Vocational Nursing (B & P C 2761/2762)
25. Marriage, Family or Child Counselors (B & P C 17820)
26. Medical Clinics or Dispensaries (H & SC 1215)
27. Opticians (B & P C 2555.1)
28. Optometrists (B & P C 3107)
29. Physical Therapists (B & P C 2660)
30. Pharmacists (B & P C 4345)
31. Professional Engineers (B & P C 6775)
32. Psychologists (B & P C 2960)
33. Psychiatric Technicians (B & P C 4521)
34. Real Estate Salesman (B & P C 10177)
35. Shorthand Reporters (B & P C 8025)
36. Structural Pest Control Operators (B & P C 8568)
37. Veterinarians (B & P C 4842)
38. Yacht and Ship Brokers (Chap. 2, Yacht & Ship Brokers, Section 77.2)
39. Academic or Non-Academic Employees of California State Colleges (Educ C 24306)
40. Disaster Office (Mil & Veh C 1518.4)

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California continued:

41. Driver's License Revocations (Veh C 13555)

42. State Employees (Gov C 19572)

43. State Employee Disciplinary Proceedings (Gov C 19572)

44. Trainees in the Youth Conservation Training Program (Pub Res C 4982)

45. Firefighters in City of Los Angeles are Peace Officers (Sect. 830.3 P. C)

46. Notaries Public (Gov C 8214.1)

47. Bail License - (CIC, Sect. 1652, 1805)

48. Department of Motor Vehicles
    a. Driving School Owners and Instructors (CAC, Title 3 400.10)
    b. Vehicle Dismantlers (CVC 11504)
    c. Vehicle Lessor-Retailers (CVC 11602)
    d. Vehicle Manufacturers, Dealers, Distributors, and Transporters (CVC 11704)
    e. Vehicle Representatives (CVC 11901)
    f. Vehicle Verifiers (CVC 11301)

49. Teacher certificates (13173, 13174(1)), (EC 44340)

50. Massage Parlor permit (Code 54, Chapter 6, California Government Code Section 5132)

51. Security Guards & Private Patrol Operators (B & P 7504, 7514(f))

52. Alarm Agents & Installers (B & P 7504, 7514(f))

53. Repossessors (B & P 7523.1, 7525(f))

54. Ambulance Operators (Div 2, Sect. 2541 & 2542)

55. Armored Car Operator (Div 2, Sect. 2541 & 2542)

56. Electronic & appliance repair (B & P Ch 20, AR 4, Section 9841(a,8) Ch 2, Section 480 (a, 1-3))

57. Grand Juror (Title 4, Ch 2, Sect. 893(b-3))

Colorado

Central Agency - Bureau of Investigations
Department of Local Affairs
Denver

1. Commissioner of Insurance -
   a. Insurance Adjusters (72-32-3)
   b. Professional Bondsmen or Soliciting Agents (72-20-3(1)(e)
2. Applicants for license regarding racing commission (CRS 129-2-4
3. Real Estate Brokers and Salesmen License (CRS 11-51-105)
4. Applicants for Admission to State Bar of Colorado (CRS Vol 7 Court Rules 209 (c))
5. Liquor License Applicants (CRS 12-46-108)
6. Securities Industry Employees (PL 94-29 exemption)

Connecticut

Central Agency - Bureau of Identification
State Police
Meriden

1. Gun Permits (CGSA 29-29)
2. Operators of Public Service Vehicles (CGSA 14-44) (Ambulance Driver)
3. Bondsmen (CGSA 29-145)
4. Private Detectives, Watchmen, Guard and Patrol Services (CGSA 29-155)
5. Explosive User Permits (CGSA 29-89)
6. Commission on Special Revenue (Executive Secretary, Directors and employees: Thoroughbred racing, Harness racing, Greyhound racing and Jai Alai) (CGSA 12-559)

Delaware

Central Agency - Bureau of Identification, State Police, Dover

1. Private Detective, Guard, Watchman, Investigator (24 DCA 1301(b)
2. Taxicab driver's license (21 DCA 2763)

District of Columbia

Central Agency - Metropolitan Police Department, Washington, D. C.

1. Securities industry personnel (94-29 exemption)

2. Applicant prints from Personnel Officer, District of Columbia, Government, after processing by MPD, Identification Bureau

3. Dealers:

   a. Firearms Dealers or permits to carry a firearm (22-3203 thru 3210 and 47-2340)

   b. Street Vendors (47-2336)

   c. Secondhand Dealers or Junk Dealers (47-2339)

   d. Guides (Sightseeing) (47-2338)

   e. Public Vehicle operators (Ambulance, funeral and taxicab drivers) (47-2331)

   f. Auctioneers (47-2309)

   g. Massage establishments, bowling, billiard, pool, solicitors, private detective, fortune tellers, mediums, and/or clairvoyants (47-2311, 2321, 2337, 2341, 2342)

   h. Alcohol Beverage Dealers (25-115A)

   i. Boxing Commission (2-1217)

   j. Parking Attendants (47-2345)

   k. Pawnbrokers (2-2003)

   l. Motor Vehicle Driving Instructors (47-2345)

   m. Solicitors (47-2336)

4. Security Guards (Title 5JJ, Reg 74-31, sec 1.1 (f), 2.2 & 3.4)

Florida

Central Agency - Florida Department of Law Enforcement, Tallahassee

1. Racing Permits (500.181(1)(5)) Horse, Dog or Jai Alai
2. Private Investigator, Guard, Patrolman, Watchmen (493.03(1)(d)10) or (493.07(1)(b)(2)(b))
3. Union Business Agent (447.04(2)(a))
4. Fire Fighters (633.34(2)(3))
5. Bail Bondsmen, under Dept of Inv. (648.34'2)(3))
6. Real Estate License (658; (FSA 475.16)
7. Licensing of mortgage brokers and mortgage solicitors (494.04(4))
8. Explosive - 1. Blasters 2. Dealers 3. User 4. Manufacture - Distribution. Applicant print to be submitted by F1921240Z - Bureau of Fire Investigation, Tallahassee (552.092(2))
9. Alcoholic Beverage Licenses (Manufacturing, Bottling, Distributing, Selling or Dealing in) (Sec 561.17(1), 561.15(2))
10. Division of Securities (Dealer, Company and Salesman Licenses) (F. S. 517-12 (6))
11. Cigarette distributing agent, wholesale dealer, or exporter (210.15(1) (c) (e))
12. Division of Banking (Ch 79-144, sect 659.02, 659.14, 665.031, 665.704 and 665.715.) (applicants to organize or acquire majority control of branch or thrift association, etc.)

Georgia - Central Agency - Georgia Crime Information Center, Atlanta

1. Alcohol Beverage Control Applicants, Retail liquor license (58-718; 58-1038.1)

2. Private Detectives (84-6511(a)

3. Applicants for Driver Training School (570-8.02(2)

   a. owner

   b. partner

   c. Officer or controlling stockholder

   d. instructor

4. Polygraph Examiner (84-5006(j)

5. Employment Agency Owner (84-4104)

6. Firemen Applicant (92A-2607)

7. Pistol Permit (26-2904)

8. School Bus Drivers (Senate Bill 374, To be submitted by the following 6 agencies only)

   1. SO Atlanta - GA0600000
   2. Fulton Co. PD Atlanta - GA0601300
   3. PD Atlanta - FAAPD0000
   4. SO Decatur - GA0440000
   5. DeKalb Co. PD Decatur - GA0440200
   6. PD Decatur - GA0440100

Guam

Central Agency - Department of Public Safety
Agana Guam

Firearms Permit (8900.(b)(1)(6))

Hawaii

Central Agency - State Bureau of Crime Statistics and Identification
Honolulu

1. Private Detectives, Guards, Patrolmen, or Watchmen (463-9)

2. Real Estate Brokers and Salesmen (467-4(2)

Idaho

Central Agency - Criminal Identification Bureau
Idaho Department of Law Enforcement
Boise

1. Section 67-2931 of Idaho State Code - Statute permits local non-law enforcement agencies to require fingerprinting by rule, regulation, or ordinance applicable to employment and licensing purposes. Although the statute represents a broad delegation of rule making power to local agencies, challenges claiming over-delegation appear to be without foundation, particularly in view of the requirement in the statute that the local non-law enforcement agencies channel their exchange requests through a central state dissemination unit. (Letter from Office of Legal Counsel, U.S. Department of Justice, 6-14-72)

   A. Lewiston
      1. Night Watchman & Armored Car Delivery Services Article V Sec. 21-91B & 21-99

      2. Peddlers and Solicitors, Article VIII Sec. 21-155(H)

      3. Taxicabs, Article II Sec. 34-60

      4. Operator's License - Other than Taxicab, Article III Sec. 34-102

      5. Massage and Massage Establishments Article IX Sec. 21-179(J)(M) & Sec. 21-180(B) 7,8

      6. City of Lewiston - Employment Chapter 5, Sec 522

   B. Weiser
      1. Bartender's Permit 3-4-12(B)

   C. Ada County
      1. Licensing of Ambulance Personnel Ordinance 35 Sec 6(F)

      2. Registration of Convicts Ordinance 25 Sec 7

      3. Private Detective License Ordinance 41 Sec 4(C)

   D. Boise
      1. Massage Establishments, Massagists City Code 5-35-4(H) & 5-35-5(I)

Idaho (continued)

2. Private Patrolman License City Code 4085 5-19-4

3. Taxicab License City Code 4070 5-74-22(B)

E. Pocatello
1. Ambulances Chapter 13 5-13-3

2. Taxicabs Chapter 14 5-14-12

3. Beer Sale and Regulations Chapter 16 5-16-7

4. Private Detective Agencies Chapter 22 5-22-3(A-6)

F. Twin Falls, Idaho
1. Entertainment License Article X Sec. (10)

G. Coeur d'Alene
1. Taxicabs 5.56.100-E

2. Alcoholic Beverages - Wine 5.12.050

3. Animal Control Officer 6.12.070

4. Alcoholic Beverages - Beer 5.08.090

5. Alcoholic Beverages - Liquor 5.16.080

6. Outdoor Assemblies 5.44.020

7. Private Detectives 5.48.30

8. Merchant Police 5.32.030

9. Massage Parlors and Bathhouses 5.28.040

H. Idaho Falls
1. Retail Liquor License 5-12-7(B)

2. Private Patrolman License 5-19-4(C)

3. Taxicab 5-16-5

4. Alcohol - Beer Retail 5-11-4(E)

5. Bartender Permit 5-12-10(C)

I. Grangeville

1. Non-resident Merchant 5-7-3(N)

Idaho (continued)

J. Caldwell
1. Escort Service 4-20-2(D)

2. Alcohol - Wine Retail 4-19-4

3. Taxicab 4-11-4

4. Sale and Distribution of Beer 4-7-4(H)

K. Bonners Ferry
1. Solicitors and Canvassers 5-6-3(H)

L. Idaho Nursing Home Administrators Sec 54-1605 & 54-1606, Idaho Code Sec 1.60

M. Idaho State Board of Landscape Architects #5 Rules and Regulations Public Hearing July 28, 1975 - #5

N. Idaho Securities Act Sec 30-1407(1)

O. Idaho State Board of Nursing 54-1412(A-3)

P. Idaho State Board of Hearing Aid Dealers and Fitters Rules and Regulations #2

Q. Idaho Department of Insurance 41-1043

R. Idaho State Bar Rule 106(A)

S. Idaho Real Estate Brokers Law Rules and Regulations 14

T. Idaho Department of Liquor Law Enforcement An Order Promulgating Beer Regulations - 2-E and 3-L

U. Idaho Horse Racing Commission Sec 43.06

2. Securities industry personnel (94-29 exemption)

Illinois

Central Agency - Criminal Justice Information Services
Springfield, Illinois

1. Vault Service Company Certificate of Inspection Application (Chap. 114, Section 353)
2. Applicants for Liquor Licenses (Chap. 43, Section 120(4))
3. Firemen (Chap. 24, Section 10-2.1-6)
4. Horse Racing Licenses (Chap. 8, Section 3.1)
5. Private Detective (Chap. 38, Section 201-10b(3); Chap. 111, Section 2611)
6. Foster Parents (Chap. 23, Section 4)
7. School Bus Drivers (95 1/2 - 6-106.1)
8. Child Care License (Chap. 23, Section 4)
9. Driver Training Instructors (95 1/2, 6-411)
10. Employees of the Secretary of State (124, 110b.1 Sec 10b.1)
11. Explosive license: manufacture, storage, transport, sale, donation or disposition of explosives (CH 96 1/2, 4812-4815)
12. Special Police, Investigators, Security Police, Guards, Watchman (Ch. 111-Sect 2611, 2622)

Indiana - Central Agency - Central Records and Identification, State Police
Indianapolis

1. Private Detective, Security Guards (42-1217(2)(a))

Iowa

Central Agency - State Bureau of Criminal Identification
Des Moines

1. Private Detective Licenses 80A.5
2. Weapon permits 17.22; 17.23

Kansas

Central Agency - Kansas Bureau of Investigation
Identification Information Services Division
Topeka

1. Private Detectives and Detective Agencies (K.S.A. 75-7b04)

Kentucky

Central Agency - Bureau of Kentucky State Police
Identification Unit
Frankfort

1. Detection of Deception Examiners (Lie Detector Examiners) 329.030(2)
2. Special Local Police Officers 61.360

Louisiana

Central Agency - Bureau of Criminal Identification
Department of Public Safety
Louisiana State Police Headquarters
Baton Rouge

No State Statute

Maine

Central Agency - Identification Bureau
State Police
Augusta

No State Statute

Maryland

Central Agency - Identification Bureau
Maryland State Police
Pikesville

1. Private Detective (Art 56, Sec 81)
2. Applicant for Pistol or Revolver Dealer's License (Art 27, Sect 443)
3. Public Service Commission Law - Taxicab operators in Baltimore City only (Art 78, Sect 50b)
4. Gun Permits - Sec 36 - ART 27 of Md. Code
5. Maryland Racing Commission (Racing Applicants) (SB # 927, Art 78B)

Massachusetts

Central Agency - Crime Reporting Unit
Department of Public Safety
Boston

1. Firearms Dealers and Gun Permits-Chapter 140 Section 131

Michigan

Central Agency - Identification Section
Michigan State Police
Lansing

1. Concealed Weapon License 28.93
2. Private Detective License 338.838
3. Private Security Guard 338.1068
4. Racing Commission Licenses 431.41
5. Polygraph Examiners 18.186(10)(g)
6. Applicants for Osteopathic License 338.102(1)(e)
7. Applicants for Podiatry or Chiropody License 338.302(1)

Minnesota

Central Agency - Bureau of Criminal Apprehension

1. Private Detectives (Investigative or Protective Agency) (326.331)

2. State Government Employee Applicants 43.14

3. Insurance Adjusters, Solicitors & Appraisers 72-B.08

4. Securities, Dealers, Brokers or Investment Advisors 80A.07

5. Medical Profession & Related Occupations
   a. Physicians, Surgeons & Osteopaths 147.021(c)
   b. Chiropractors 148.10
   c. Nursing (148.261) & (148.297)
   d. Optometry (148.57)
   e. Physical Therapist (148.57)
   f. Dentist & Dental Hygienist or Dental Assistant 150A.08
   g. Pharmacist 151.06
   h. Podiatry 153.07

6. Enbalmers & Funeral Directors 149.05

7. Cosmetology 155.16
   a. Hairdresser
   b. Beauty Culturist
   c. Operate Shop or School for Hairdressing or Beauty Culture

8. Veterinarians 156.081

9. Employment Agency or Counselor 184.33

10. Collection Agent (332.16) (332.33)

11. Aeronautics (360.018)
   a. Airmen (pilot, etc.)
   b. Instructors
   c. Registration of aircraft
   d. Commercial operators

12. Handgun (Pistol) Permits
   a. Purchase (624.713)
   b. Carrying (624.714)
   c. Transfer (624.713)

Minnesota (continued)

13. Liquor Licensing (340.13)

Mississipi

Central Agency - Identification Division - MHSP
Department of Public Safety
Jackson

1. Liquor License 10265-23

2. Polygraph Examiners 73-29-13; 73-29-15

Missouri

Central Agency - Bureau of Identification and Records
General Headquarters
Missouri State Highway Patrol
Jefferson City, Missouri

No State Statute

Montana

Central Agency - State Identification Bureau
1437 Helena Avenue
Helena, Montana 59601

1. Private Investigators and Private Patrol Operators 66-3308

2. Acupuncture License 40-3.54(a)

3. Alarm System Installers 40-23.(6)

Nebraska - Central Agency - Nebraska State Patrol
Criminal Division
Lincoln

No State Statute

Nevada

Central Agency (acting) - Nevada State Highway Patrol (ORI# NV0139900)
555 Wright Way
Carson City, Nevada 89711

1. Private Investigators, Private Detectives, Security Guards, Private Police Patrolmen 648.080
2. License to Practive Chinese Medicine T54NRSAutl9(1)
3. Applicants for Insurance Agent's, Broker's or Solicitor's License 683A.150
4. Securities Brokers, Dealers and Agents 90.130
5. School Teacher Certificate 396.020
6. Gaming Licensing and Control (Must have position such as dealer etc. Per Gary Elliott 11-6-78) 463.150; 463.335
7. Horse Racing Personnel 466.170
8. Physical Therapists 640.090
9. Collection Agency Personnel 649.196; 649.265
10. Applicant for Admission to State Bar of Nevada NRS Title 1, Ch 2, Sect 2.120
11. Taxicab operator NRS 706.8841
12. Teachers' Aides, Auxiliary, non-professional personnel to assist certified personnel in instructions and supervision. (Chapter 462 NRS 391.1002a

New Hampshire

Central Agency - State Police
Records and Reporting Unit
Concord

1. Private Detective, Watchman, Security Guard, Patrol Agencies, etc. 106-E:3I
2. Racing Commission licensees 284.15

New Jersey

Central Agency - Department of Law and Public Safety
Division of State Police
Records and Identification Section
West Trenton

1. Employees of licensed private detective agencies (45:19-16)

2. Firearms Licensing
   A. Permit to purchase pistol or revolver or I.D. card for shotgun or rifle (2C:58-3)
   B. Retail dealers and employees (2C:58-2)
   C. Permit to carry pistol or revolver (2C:58-4)
   D. Permit to purchase, possess and carry machine guns (2C:58-5)

3. Special Policemen (40:47-19)

4. Persons directly or indirectly connected, in the check-cashing business, with persons or firms licensed to operate such businesses (17:15A-3)

5. Drivers and substitute drivers of school buses (18:14-12.12)

6. Firemen (40:47-3)

7. Securities Industry Personnel (49:3-56 and 49P3-58)

8. Department of Human Services (applicants for employment at psychiatric hospitals, memorial homes, schools for mentally retarded, youth and family services, etc.) (11:10-6.1)

9. New Jersey Racing Commission Licenses (5:5-34)

10. Applicants for employment or union activities on waterfront or at airport (32.23-14,21,41,92,93,99,105,155,156,etc.)

11. Gaming Licensing and Control, Casino gaming (5:12-84 et seq)

12. Motor Vehicle Dealer's License (buying, selling or dealing) (39:10-19/ 39:10-20/ 13:21-15.1)

13. Child adoption and/or child abuse investigations (9:3-47/ 9:3-48/ 30:4C-12/ 9:6-1)

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New Jersey continued:

14. Manufacture or distribution of controlled dangerous substance (24:21-11/ 24:21-12)

15. Licensing in professional occupations
    A. health care professional generally (45:1-13)
    B. public accounting (45:2B-18)
    C. barbers (45:4-40)
    D. beauty culture (45:4A-15)
    E. chiropody (45:5-8)
    F. dentists (45:6-7)
    G. dental hygiene (45:6-40)
    H. embalmers and funeral directors (45:6-62)
    I. engineers and land surveyors (45:8-38)
    J. marriage counseling (45:8B-5 et seq)
    K. medicine and surgery (45:9-16)
    L. physical therapy (45:9-37.7)
    M. bioanalytical laboratory (45:9-42.12)
    N. clinical laboratory (45:9-42.40)
    O. hearing aid dispensers (45:9A-17)
    P. acupuncture (45:9B-12)
    Q. midwifery (45:10-9)
    R. nurses (45:11-32)
    S. ophthalmalic dispenser or technician (52:17B-41.22)
    T. orthoptics (45:12A-7)
    U. optometry (45:12-11)
    V. pharmacy (45:14-12)
    W. psychologist (45:14B-24)
    X. plumbers (45:14C-22)
    Y. veterinarian (45:16-6)

16. Applicants for license from Division of Alcoholic Beverage Control (33:1-25 and 33:1-31.2) Employees seeking work in liquor industry (33:1-26)

17. Applicants for permits as Owners or Instructors at Commercial Driving Schools (39:12-3; 39:12-6; 39:12-7; and 39:12-8)

18. Applicants to hold, operate or conduct, amusement games (5:8-103)

19. Application for permits to manufacture, sell, store, transport or use explosives (21:1A-134)

20. Real estate brokers or salesmen (45:15-9, 12,1 17 and 19.2)

21. Licensing relating to Bingo or raffles (5:8-27, 49.6, 49.8, 53 and 61)

22. New Jersey State employees (11:10-6.1) (may be submitted by any State Department)

New Jersey continued:

23. Motor Vehicle reinspection stations licensing or employment (39:8-19)

24. Operators of Insurance Business (17:17-10 and 17B:18-42)

25. Municipalities employment (40-69A-166)

26. Applicants for admission to State Bar of New Jersey (PL 1979 Ch 370)

New Mexico

Central Agency - State Police
Santa Fe

1. State Racing Commission - participants and employees (60-6-2.2.C)

2. Alcoholic Beverage License (45-5-15.1)

*3. Private Investigator, Security Guard, and Private Patrol Operator (67-33-13.F)

*Prints submitted from Attorney General, New Mexico

New York

Central Agency - Division of Identification
St. Division of Criminal Justice Services
Albany, New York

1. Firearms License (400.00.4)
   A. Carry
   B. Possession
   C. Repair
   D. Disposition (dealers, etc.)

2. Boxers, Wrestlers Licensing by State Athletic Commission
   (Unconsolidated Law 8911.2)

3. Check Cashing License (Banking Law 369.6)

4. Private Investigators, Watchmen, Security Guards, etc.
   (General Business Laws, Section 72)

5. Security Exchange Member Firm Employees
   (General Business Laws, Section 359-e)

6. Manufacturers and Wholesalers of Liquor (Alcoholic Beverage Control Law, Section 103 and 104)

7. Grand Jurors (Judiciary Law 609.1)

8. Migrant Registration Law (Farm Labor Contractor)
   (New York Labor Law, Section 212-a.2.b.)

9. Public Galleries and Museums
   (New York Labor Law, Section 200-b)

10. Waterfront Commission of New York Harbor, NY
    A. Hiring Agents (New York Unconsolidated Law Section 9814)
    B. Longshoreman (New York Unconsolidated Law Section 9829)
    C. Pier Superintenden (New York Unconsolidated Law Section 9814)
    D. Port Watchman (New York Unconsolidated Law Section 9841)

11. Firefighters
    (Civil Service Law, Section 50.4(d)

12. Hospital Employees (Labor Law, Section 200-b)

13. Alcoholic Beverage Control Law (Bottle Club Licenses)
    (St. Liquor Authority, Section 49.5)

New York continued

14. Insurance Law Adjusters, professional bondsmen (Insurance Law, Section 331)

15. Horse Racing Facilities Employee and Participant (Unconsolidated Law, Section 8010)

16. Inspectors and Investigators of the St. Department of Agriculture (Agriculture and Market Law, Section 11)

17. Employees of the NYC School System (Education Law, Section 2590-h)

18. Employment Agency Operators (General Business Law, Section 174)

North Carolina

Central Agency - North Carolina State Bureau of Identification, Raleigh

1. Bail Bondsmen and Runners (85A-12)

2. North Carolina Board of Law Examiners - Bar Applicants (84-20)

3. Embalmers and Funeral Directors (90-203 & 90-210.15)

North Dakota - No State Statute

Central Agency - Bureau of Criminal Investigation
Division of the Attorney General
Bismarck

Ohio

Central Agency - Bureau of Criminal Identification, London, Ohio

1. Private Detectives, ORC 4749.01/.03 Private Investigators (Includes: Watchmen, Guards, Private Patrolmen)

2. Horse Racing Applicants ORC 3769.03 - Ohio Racing Commission

Oklahoma

Central Agency - Oklahoma State Bureau of Investigation
Oklahoma City

1. Bailbondsmen or Bail Runner Licenses (59.1305 & 59.1307)

2. State Bar Applicants (admission to practice of law) (T5, Ch 1, appendix 5)

Oregon

Central Agency - Bureau of Identification
State Police
Salem, Oregon

1. Concealed Weapon Permit (166.270 & 166.290)
2. Insurance Agents (744.063)
3. Polygraph Examiner License (703.090)
4. Racing Commision Applicants (462-020)
5. Liquor Control (Chapter 471)

Pennsylvania

Central Agency - Records-Identification Division
State Police
Harrisburg

1. State Horse Racing Commission - Participants and employees (Title 15, Section 2609(b))
2. Lethal Weapons Training Act - Lethal Weapons include but not limited to firearms, mace, billy club, etc. (Title 22, Section 46(d)
Watchmen, Guards, Private Protective Patrolmen, Private Detectives or Criminal Investigators seeking authority to carry lethal weapons

Puerto Rico

Central Agency not named

1. Private detectives (25 LPRA 285c)
2. Concealed weapon permit (25 LPRA 428)

Rhode Island

Central Agency - Division of Criminal Identification
Department of Attorney General
Providence

1. License to carry a firearm (11-47-11)

2. Horse Racing Commission (41-3-8; 41-3-9)
   A. Owners
   B. Trainers
   C. Jockeys
   D. Starters
   E. Grooms and Hot Walkers
   F. All other stable personnel

3. Alarm Agent Licensee (5-57-30)
   *Prints submitted by Division of Criminal Identification

4. Jai Alai Employment (41-7-1 thru 41-7-9)

South Carolina

Central Agency - Criminal Justice Records Section
South Carolina Law Enforcement Division
Columbia

1. Gun Dealer Permit (23-31-150)

2. Pistol Permit (23-31-140)

3. Security Guards (40-17-40)

South Dakota

Central Agency - Division of Criminal Investigation
Office of the Attorney General
Pierre

No State Statute

Tennessee

Central Agency - Bureau of Criminal Identification
Nashville

1. Private investigator (Chapter 691 TN PUB Act of 1978, Section 33)

Texas

Central Agency - Department of Public Safety, Identification & Criminal Records Division, Austin

1. Liquor License (11-667-5D)

2. Private Security Patrol Operators or Private Security Agency Article 4413 (29bb) Section 15 (a)(7)

3. Private Detective or Private Patrolman (VTCA 70-4413(29bb).15)

4. Applicants for Medical Licenses(71-4511B)

5. Boxing and wrestling act (Annotated Civil Statute Article 8501-1)
   A. Boxer
   B. Wrestler
   C. Manager
   D. Referee
   E. Judge
   F. Second
   G. Timekeeper
   H. Matchmaker

6. Structural Pest Control Act (Annotated Civil Statute Article 135b-6)
   A. business licenses
   B. certified applicator's license

7. Labor Agent (5221a-5, Section 3(b))

Utah

Central Agency - Utah Bureau of Identification
Salt Lake City

1. Deception Detection Examiners, (Polygraph license) (34-37-5.(1)(j))

2. Concealed weapon Permit (76-10-515)

Vermont

Central Agency - Department of Public Safety, Bureau of Identification, Montpelier

1. Horse Racing, including grooms, jockeys and drivers (31.605) (all racetrack employees)

Virginia

Central Agency - Central Criminal Records Exchange, Richmond, VA. (State Bureau)

1. Polygraph Examiners (54-921)

2. Private Security Services (54-729.32)

Virgin Islands

Central Agency - None

1. Firearms (23.456)

Washington

Central Agency - Director
State Identification Section
State Patrol
4242 Martin Way
Olympia, Washington 98504

1. Real Estate License (18.85.120)
2. Auto Dealer and Salesman License (46.70.041)
3. Insurance Agents,Adjustor, Broker, Solicitor (48.17.090)
4. Gun permits (9.41.070)
5. Barbers (18.15.130)
6. Debt Adjustors (18.28.060)
7. Peddlers (48.06.040)
8. Washington State Horse Racing Commission (67.16.010)
9. Washington State Gambling Commission (9.46.010)
10. Liquor License (66.24.010)
11. Massage Business Licenses (18.108.070)
12. Emergency Vehicle Operator Permit (WAC 204-36-030)

West Virginia

Central Agency - State Police, Criminal Identification Bureau
South Charleston

No State Statute

Wisconsin

Central Agency - Crime Information Bureau
Madison

1. Watchmen, Guards, Private Detective, etc. (440.26)

Wyoming

Central Agency - Division of Criminal Identification, Cheyenne

No State Statute

Mr. BREEN. And if you could, to some extent, the numbers of applications for those specific jobs that you processed in the most recent fiscal year, like if you had hairdressers in Illinois or somewhere that had to be processed, how many of those——

Mr. BANNER. We would not have any breakdowns on that.

Mr. BREEN. OK.

Mr. BANNER. All we would have are the number of submissions under Public Law 92–544 for that particular State. That would be a total number. We do not have the capability to furnish itemized information as to the specific professions and jobs involved.

Mr. BREEN. Doesn't the public law include more than just licensing requirements? It includes——

Mr. BANNER. Employment and licensing.

Mr. BREEN. Does that employment include police-type employment as well?

Mr. BANNER. If it is private police, yes. If it involves a duly authorized law enforcement agency, it comes under the regular exchange with criminal justice agencies.

Mr. BREEN. Thank you, Mr. Chairman.

Mr. EDWARDS. Does it bother any of you that you have two systems of criminal records in different departments, duplicating each other?

Mr. BAYSE. That is the reason that we believe it is time to develop a new system that integrates appropriate systems, using an independent study source such as the Jet Propulsion Lab, and to pull together any duplicative data.

The functions of the two divisions are different, although they both serve law enforcement, criminal justice. Probably, in the long-term identification systems and NCIC/CCH should be combined organizationally within the FBI.

Mr. BANNER. Congressman, I would like to add in regard to the Identification Division, we have been striving since about 1969, and I know the entire FBI has been striving to come up with a single system.

Unfortunately, we have been unsuccessful to date, but we are renewing our efforts. We do not like the duplication.

Mr. EDWARDS. Some of your burdens are caused by congressional law. I think that by law we require insured banks and savings and loans must get criminal histories. They are not allowed to hire people with felony records or something like that.

Mr. BANNER. Yes, sir.

Mr. EDWARDS. So we don't have much choice. They have to take them somewhere.

Are there more and more States requiring more and more criminal histories from you for licensing and employment purposes?

Mr. BANNER. The amount of such checks is increasing, Congressman.

Mr. EDWARDS. That is a rather serious matter because it involves discrimination. It involves quite a number of economic aspects that might not be appropriate. For example, were any of you around when Washington, D.C., had an ordinance that permitted any employer in Washington, D.C. to inquire of the police department and in turn the police department could inquire of the Identification Division whether or not an applicant for a job, any job, we will say at Woodies, had a criminal record?

Do any of you remember when they had that law in Washington?

Mr. BANNER. No, sir, and we would not approve of such an ordinance.

I can give as an example an experience with the State of Louisiana. St. Mary Parish had a law on the books wherein any job applicant who was not a resident of the parish had to have a fingerprint check and it was said that the checks were forwarded to the FBI. They were not and we would not allow such a blanket sort of provision.

There has to be some public safety aspect before our review would allow such a service, and it surprises me to hear that there was such an ordinance here in the District of Columbia.

Mr. EDWARDS. Well, it was stopped first by a court and then by a change in the ordinance, but in answer to a question presented by Mr. Breen, the response was, I believe that if, we will say, the State of Florida wanted to get a criminal history check on hairdressers, or gardeners, or almost any job, that as long as the Florida Legislature authorized it, the FBI would provide that record to a State licensing agency.

Mr. BANNER. Yes; but those are particular professions or trades, but a blanket across-the-board request for such services would be reviewed with disfavor.

Mr. EDWARDS. Would be reviewed by whom?

Mr. BANNER. By the Identification Division, and if we still had a question in regard to it, we would forward it to the Department of Justice for their review.

Mr. EDWARDS. Do you have regulations that this group in the identification comply with, written regulations?

Mr. BANNER. We have a legal staff that reviews all such requests to insure there is a State statute and that it appears to be proper, that there is no apparent overriding public policy against such a service.

Mr. EDWARDS. There must be a regulation that establishes that, provided by the Department of Justice or by FBI?

Mr. BANNER. Yes.

First of all, of course, we have Public Law 92–544, which allows the service to be rendered to the States. Then under that there is a delegation of the Attorney General's authority and that is codified in the Federal Code of Regulations.

Mr. EDWARDS. Can you provide the subcommittee with that information, specifically how those decisions are made by the Identification Division?

Mr. BANNER. Yes, sir.

[The information follows:]

RULES GOVERNING THE FURNISHING OF CRIMINAL HISTORY RECORD SERVICES TO STATE AND LOCAL GOVERNMENTS FOR EMPLOYMENT AND LICENSING PURPOSES

The statutory basis for furnishing criminal history record services to state and local governments for employment and licensing purposes is found in Public Law 92–544 (The Department of Justice Appropriation Act, 1973, 86 Stat. 1115), which provides as follows:

"The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereinafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State statute and approved by the Attorney Gereral, to officials

of State and local governments for purposes of employment and licensing, any such exchange to be make only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned appropriation."

The Attorney General delegated his authority to approve such services to the Director of the FBI by Title 28, Code of Federal Regulations, Section 0.85(j), which provides that the FBI Director will:

"Exercise the power and authority vested in the Attorney General by section 201 of the Department of Justice Appropriation Act, 1973, Pub. L. 92–544, 86 Stat. 1115, to approve and conduct exchanges of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing; and exercise the power and authority vested in the Attorney General by section 14 (f) (2), Pub. L. 94–29, 89 Stat. 140, to approve and conduct exchange of identification records with certain segments of the securities industry."

The authority delegated by the Attorney General to the Director of tFBhe I is exercised by the management of the Identification Division, i.e., by Supervisory Special Agents who are attorneys. A request for the establishment of such a service is reviewed to determine whether: (1) a state statute exists relating to the employment or licensing; (2) the statute contains specific language requiring a check of FBI criminal history records; and (3) there is no overriding public policy reason which would preclude providing the service. Examples of overriding public policy reasons which would result in a refusal of service are: (a) where there is a blanket requirement for record checks in connection with all employments or licensing without regard to any public safety need; and (b) where record checks are required on the basis of a person's race, color, sex or religion. Whenever the Identification Division has doubt concerning whether or not a statute should be approved, the matter is referred to the Department of Justice's Office of Legal Counsel for an opinion.

The FBI requires that all fingerprint cards relating to state and local employment and licensing be submitted and checked through the criminal arrest files of the appropriate state identification bureaus, and that only those cards for which no records were located be forwarded on to the Identification Division. Upon receipt of the cards at the Identification Division, they are screened to insure that they bear a stamped notation indicating they were processed through the appropriate state identification bureau; and, if so, that there is an approved state statute governing the particular employment or licensing involved. If either is missing, the fingerprint cards are returned to the contributors unprocessed.

Mr. EDWARDS. It would be very helpful.

Are there further questions?

Mr. BREEN. Could you tell me how many agent personnel are assigned to the Identification Division?

Mr. BANNER. Seventeen.

Mr. BREEN. Seventeen agent personnel?

Mr. BANNER. Yes.

Mr. BREEN. Are there any other personnel besides the GS–3's through the GS–7's and the agent personnel assigned to identification?

Mr. BANNER. Mr. Breen, there are people in the support ranks from grade 3 all the way up to grade 15, depending upon whether they are in a supervisory capacity or not.

Mr. BREEN. The 17 include the management people like yourself?

Mr. BANNER. Yes, sir.

Mr. BREEN. I am wondering if assignment to this Division is considered by the Bureau or its agents as good for career development or not?

Mr. BANNER. I think that is an individual matter, sir. I wouldn't want to answer for all the agents.

Mr. BREEN. I assume the Bureau considers it good for career development?

Mr. BANNER. Yes, sir. It is on the career development path.

Mr. BREEN. The GS–3 through the GS–7 area, those are the people where you find the most turnover of the personnel, obviously?

Mr. BANNER. Yes, sir.

Mr. BREEN. How long does it generally take to go from a three to a seven?

Mr. BANNER. In the past it was 42 months. We have cut that down to 37 months, just over 3 years, and we are hoping to cut out another 6 months or a half a year in the near future.

This is in the fingerprint examiner position, which is the backbone of the fingerprint processing work that we do.

Mr. BREEN. That is where you have your greatest turnover, I trust?

Mr. BANNER. Yes, sir.

Mr. BREEN. How much does it cost to train a new person, a three, for example?

Mr. BANNER. About $2,900 for a new fingerprint examiner.

Mr. BREEN. How many of the division's employees are in that area from GS–3 through GS–7?

Mr. BANNER. About 1,300.

Mr. BREEN. So more than half of the people are not assigned to that really labor-intensive-type work?

Mr. BANNER. There are many other labor-intensive operations in the Division, such as name searching in the Card Index Section, the handling of files in our Assembly Section, the typing of records and the keying of records into data entry devices in our Fingerprint Correspondence Section and the Automation Research Sections.

There are many, many tasks besides actually searching fingerprint cards.

Mr. BREEN. Does the Bureau, aside from providing some latent fingerprint schools around the country which I have read about in the submissions, provide the other kind of schools for just fingerprint identification for the State and local or at least the State facilities that are trying to develop their own capability?

Mr. BANNER. We have fingerprint-trained agents in the various States who will handle the generalized training in fingerprint matters for local agencies. However, if it gets into the area of latent fingerprints, which is the very advanced area of fingerprint science, then people from our Latent Fingerprint Section will handle it. Classes are held at the FBI Academy in Quantico or we will even hold such classes in the area of the country involved.

Mr. BREEN. Latent fingerprints amount to a very miniscule part of the fingerprint operation of the Bureau, is that correct?

Mr. BANNER. Yes, sir, in volume. Yes.

Mr. BREEN. I happened to visit North Carolina a couple of years ago and the study the chairman referred to and they have a fairly sizable fingerprint operation. They were looking to get a copy of the manual that the FBI uses to train its personnel and they just weren't able to get it.

I am wondering if that was then a policy or if it is now the policy that State fingerprint bureaus can or cannot have access to such materials for training purposes?

Mr. BANNER. I know personally about the incident that you are describing and evidently, as far as I can determine, there was a misunderstanding.

Such documents and materials are always available to criminal justice agencies. If they will ask for them, we will give them.

Mr. BREEN. That misunderstanding has been cleared up, at least with North Carolina then?

Mr. BANNER. It has, and they have the particular document that you mentioned.

Mr. BREEN. There are lots of former FBI employees down there and I assume elsewhere.

Mr. BANNER. Yes, sir.

Mr. EDWARDS. Last year you received 6,145,659 fingerprint cards from contributing agencies. How many of those cards had to be classified?

Mr. BANNER. In the area of about 3 million.

Mr. EDWARDS. About half?

Mr. BANNER. About half, sir.

Mr. EDWARDS. Do you classify cards or just send in just to be stored for identification, possible identification in the future, in the case of an accident or disaster?

Mr. BANNER. You are referring, I believe, Congressman, to fingerprint cards sent in for personal identification?

Mr. EDWARDS. Right.

Mr. BANNER. We classify the prints for storage purposes so that in case the person is involved in a disaster, and we have to identify the person by fingerprint characteristics, we can do so, but there is no search performed in regard to our criminal file.

The fingerprint card is received in the mail and goes directly over to our civil file which is separate from the criminal file. It is classified.

Mr. EDWARDS. How many people work on the classification there?

Mr. BANNER. Very few, sir. The whole civil file involves only about 100 people and last year we received a very small number of such cards, 1,144, so it was no real burden to handle.

Mr. EDWARDS. I have no further questions. This has been a very interesting and useful exchange today, gentlemen, and I want to compliment you on your targets that you have set for the divisions.

It is really very important that you achieve these goals and we stand to help you in every possible way, but by the time we see you again next year, or sooner, we hope that considerable progress has been made and that all that equipment has been purchased and operating and there is no more downtime. Thank you.

Mr. BANNER. Thank you, Mr. Chairman.

[Whereupon, at 11 a.m., the subcommittee was adjourned.]

FBI OVERSIGHT

MONDAY, MARCH 17, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2226, Longworth House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Seiberling, Drinan, Volkmer, and Sensenbrenner.

Also present: Thomas P. Breen, counsel; and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Today we are going to continue our work in advance of the full committee's consideration of the authorization request of the Department of Justice. The FBI conducts background investigations for certain Department of Justice employees, Cabinet officers, officials, candidates for Federal judgeships, and other Government employees. This work is very important and must be done efficiently, thoroughly, and accurately.

We are pleased to have with us today representatives of the Federal Bureau of Investigation to describe their program and the policies associated with the necessary commitment of resources. Our chief witness today is Francis M. Mullen, Jr., who is the Assistant Director of the Criminal Investigation Division under which this activity is administered.

We welcome you, Mr. Mullen, and ask that you please introduce your colleagues.

TESTIMONY OF FRANCIS M. MULLEN, JR., ASSISTANT DIRECTOR, CRIMINAL INVESTIGATION DIVISION, FEDERAL BUREAU OF INVESTIGATION, ACCOMPANIED BY JOHN C. LAWN, SECTION CHIEF, CIVIL RIGHTS AND SPECIAL INQUIRY SECTION; JOSEPH D. DOMZALSKI, ASSISTANT SECTION CHIEF, CIVIL RIGHTS AND SPECIAL INQUIRY SECTION; AND L. C. GROOVER, INSPECTOR, DEPUTY ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT BRANCH

Mr. MULLEN. Thank you, Mr. Chairman. With me today is John C. Lawn, who is Chief of our Civil Rights and Special Inquiry Section; Mr. Clyde Groover representing our Financial Personnel Division, who can discuss any cost related to applicant investigation; and Mr. Joseph Domzalski, who is Assistant Section Chief and also head of our Departmental Applicant Unit at FBI headquarters.

Mr. EDWARDS. Please proceed.

Mr. MULLEN. It is a pleasure to appear before you again today to discuss the FBI's applicant investigations.

By way of introduction, Executive Order 10450 requires that individuals being employed by the executive branch of the Government be afforded an investigation to establish their reliability, trustworthiness, good conduct, and character, and loyalty to the United States. This forms the basis for most background investigations performed by the Federal Government.

Investigations of nominees for the Federal judiciary and top-level positions in the Department of Justice, have been performed by the FBI since at least the late 1930's and are initiated upon written request from the Department of Justice. Title 28 of the Code of Federal Regulations authorizes the FBI to conduct personnel investigations requisite to the work of the Department of Justice and whenever required by statute or otherwise—title 28 CFR, part O, subpart P, section 0.85(c).

FBI background investigations of prospective nominees for higher positions in the Government, other than in the judiciary and Department of Justice, essentially began with the election to the Presidency of Dwight D. Eisenhower in November 1952. President-elect Eisenhower requested that the FBI conduct such investigations of not only his Cabinet officers, but also of many subcabinet officials, and high-ranking officials of agencies not within the Cabinet.

The FBI has been called upon to perform this service for each succeeding administration. As a general rule, requests are made for a background investigation of all persons who are prospective nominees for employment in positions which require Senate confirmation. The FBI conducts all of these investigations, except for nominees who are being considered as U.S. Ambassadors. We have conducted approximately 1,000 Presidential appointment investigations for the administration of President Carter from November 1976 through February 21, 1980.

Prior to the election of President Carter, no formal memorandum of understanding existed concerning the various details attendant to such investigations. Such a memorandum of understanding was executed, however, between then Attorney General Edward H. Levi and President-elect Carter in November 1976. This memorandum of understanding, coupled with Executive Order 10450, and FBI internal regulations concerning applicant-type investigations in general, govern FBI procedures in the conduct of these investigations, and the dissemination of results.

The memorandum of understanding contains a provision that the individual will consent in writing to the investigation by the FBI and that information developed will be retained consistent with the FBI records retention plan.

The purpose of our investigations is to determine the nominee's suitability for employment and/or his or her trustworthiness for clearance to classified information. To this end, we conduct inquiries concerning the nominee's character, associates, loyalty, and reputation in the community. The background investigations, for nominees to the Cabinet and top-level positions of the Department of Justice, are designed to thoroughly and comprehensively cover the individual's adult life since graduation from high school.

Inquiries are made at all institutions of higher education and employment. Receipt of degrees is verified, overall grade-point average and class standing are determined, if available, professors are contacted, supervisors and coworkers are interviewed. Neighborhood inquiries are made at places of residence during the last 5 years. Credit and arrest checks regarding the nominee are conducted at all places of residence, education, and employment. Arrest checks are also conducted on close relatives at their place of residence.

For judicial nominees a broader canvass of the community is made to include representatives of the legal profession; judges, and law enforcement officials at Federal, State, and local levels; and representatives of minority, ethnic, labor, and religious groups. Newspaper morgues, where available, are also searched for any possible controversial material concerning judicial candidates. In addition to character, reputation, associates, and loyalty, inquiries concerning judicial nominees cover such areas as commitment to equal justice under law, temperament, and freedom from bias against any class of citizens or groups, possession of outstanding legal ability and competence, and ability to manage complicated pretrial and trial proceedings—Executive Order 12097 issued on November 8, 1978, set forth standards and guidelines for the merit selection of U.S. district judges.

Traditionally, the FBI does not initiate investigation into financial standing, or sources of income. That responsibility has been assumed by the White House staff and Department of Justice. If information is received, however during the course of an investigation which indicates possible irregularities involving the nominee's income or assets, this information is furnished to the White House or Department of Justice.

Investigation to resolve such an allegation is occasionally conducted, but in no known case—except during the investigations of the appointed Vice Presidents Ford and Rockefeller—has the FBI conducted a detailed audit of a nominee's financial affairs.,

Similarly, if information is developed indicating possible criminal conduct, that information will be reported to the requesting authority. If the allegation is specific enough to warrant initiation of a criminal investigation, a prosecutive opinion will be obtained and necessary investigation implemented.

This concludes our prepared statement and I am available to answer any questions you may have concerning these investigations.

Mr. EDWARDS. Thank you Mr. Mullen. The first person to be recognized is the gentleman from Ohio, Mr. Seiberling.

Mr. SEIBERLING. Thank you.

Mr. Mullen, I must say that I feel that the FBI in these background checks has done a reasonably outstanding job, from everything that I know. I have been unhappy in the past about some of the gossipy types of material that is retained for long periods of time in FBI files, without any seeming evaluation, and I know my colleague on the left, Father Drinan, has brought that subject up in the past, and I certainly strongly support further efforts to make sure that that kind of material is not perpetuated.

I am on the House Interior Committee, and we have general oversight over the Department of Interior, and I have been quite disturbed to read recently in Jack Anderson's column, statements

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implying that the FBI check on Gov. Cecil Andrus, at the time he was nominated to be Secretary of Interior, was not thorough, or else somebody removed material, I would like to ask you a couple of questions about that.

First, was information in the FBI's file regarding Gov. Cecil Andrus scissored out by President Carter, as alleged by Mr. Anderson?

Mr. MULLEN. No, Congressman: it was not, and to elaborate, I have read the Anderson columns, and I personally took the time to review the investigative file on Mr. Andrus from beginning to end, and the columns are totally inaccurate. No such information was ever obtained, and none was removed before sending the report to the White House.

Mr. SEIBERLING. Let me make sure I understand this. Let me put the question a little differently, then. Was there anything in the file regarding Cecil Andrus that would substantiate the Jack Anderson allegation?

Mr. MULLEN. No, sir.

Mr. SEIBERLING. Thank you.

It is just utterly deplorable that this kind of material would be put in the press, but I am delighted to hear the FBI's refutation of this, and I would hope that the news media would make an appropriate retraction or apology. I personally, in 3½ years of oversight over the Department of Interior, since Mr. Andrus became Secretary of Interior, have found absolutely nothing to indicate that he was anything but one of the highest type public servants that I know, and I am delighted that the FBI's check substantiates that as of the time that his nomination was submitted.

Mr. MULLEN. I would elaborate just a little further if I may, Congressman. Over 70 individuals were contacted during the course of that investigation, and all I believe, save one individual who had a a complaint on his attitude in Indian matters, were very complimentary and highly recommended him for the position.

Mr. SEIBERLING. I did a personal check on Mr. Andrus when his nomination was submitted and before he was confirmed, because I was concerned about the kind of background that he would bring with him to the Department of Interior, and I personally found only the highest compliments, from all the people that had any knowledge of him that I was able to contact, and I am delighted to find that the FBI's check was on all fours, and I appreciate that answer.

I would like to ask one other question. How is my time, Mr. Chairman?

Mr. EDWARDS. Go ahead.

Mr. SEIBERLING. Some years ago, under the Freedom of Information Act, I asked for information from my own FBI file. Having been an officer in the U.S. Army in World War II, and later had an Atomic Energy Commission clearance and naval clearance, I thought it might be interesting, and I must say that there was a lot of stuff in that file that was inaccurate, some material that was just plain incorrect, and some of a gossipy character which had nothing to do with my qualifications or my character, but was just reporting material that really was not correct, and was irrelevant. I just wondered how long you keep that sort of stuff hanging around?

Mr. MULLEN. The applicant files are retained for a period of 30 years before they are destroyed.

Mr. SEIBERLING. Don't you try to evaluate the credibility of material you put in the file?

Mr. MULLEN. Yes; we do attempt to verify the information. I don't know the exact nature of the information to which you are referring, but if there is information that is derogatory——

Mr. SEIBERLING. It was general conversations that I had with FBI agents and various other people with philosophical matters and political philosophy and stuff like that, all of it being in the file and very little of it having anything to do with whether I was a security risk.

Mr. MULLEN. This was an applicant file we are talking about?

Mr. SEIBERLING. Yes; I think it was developed at the time when I was an attorney for Goodyear, seeking an AEC or naval clearance, so I could deal with secret and classified matters.

Mr. MULLEN. Congressman Seiberling, if I could see the material I could discuss it.

Mr. SEIBERLING. It wasn't of any great moment. I just thought it was ridiculous to have all that junk in the file.

Mr. MULLEN. I would agree. During the applicant investigations we try to avoid obtaining and retaining that type of purely gossipy information, gossipy. We try to investigate in such a manner that the information pertains to the individual's qualifications and/or suitability for the position being sought. That is our standard. But perhaps in the past you could find files, especially in some relations with Congressmen or one like that where that type of material may have been placed in the file.

Mr. SEIBERLING. It was long before I ever had any intention of being a Congressman. It just seemed to me that they regurgitated whatever they turned up without regard to whether it had any significance or meaning or relevance, and I hope that they have improved their sifting of this material.

Mr. MULLEN. I am certain that we have. The applicant investigations that I have reviewed, that have passed over my desk, appear to me to be very detailed pertainiug to the issue at hand, rather than containing gossip and other such material.

Mr. SEIBERLING. Thank you. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman, and thank you, Mr. Mullen and your associates. When I was dean at Boston College Law School I taught 1,300 lawyers, and as a result the FBI was investigating them on a regular basis for positions, so I have been talking to your agents for many, many years, and I was always jolted by one question that they felt obliged or were obliged to ask: Do you have any reason to doubt the loyalty of Mr. Jones?

When was that inserted into the law? Is that the 1952 Eisenhower Executive order?

Mr. MULLEN. April 1953, Executive Order 10450.

Mr. DRINAN. Has it ever been defined; what it meant?

Mr. MULLEN. It is defined as being loyal to the U.S. Government not loyalty to any particular individual, that not being a member of a group whose interests were opposed to the U.S. Government or its principles.

Mr. DRINAN. Would the Republic be ruined if we dropped that particular source of inquiry?

Mr. MULLEN. I don't know if it would be ruined, Congressman, but I think it is important to determine an individual's loyalty to the U.S. Government.

Mr. DRINAN. I always answered yes, and if the man was writing down things, as sometimes they were and I wanted my former students to get ahead in the world and I said, "Oh he is very patriotic." And he would write this down, now, during the war years this was rather delicate. What do we mean by loyalty? I sometimes wonder what is in the files of all those thousands of people that were investigated for important positions.

I recall some people who were applying for the position of assistant U.S. attorney. The FBI agent sometimes was very direct, and would say, "Well, has he ever participated in demonstrations against the war?" And that was what constituted violations of the normal loyalty. In any event, I think a lot of people are very uncomfortable with the question and that it doesn't really go in to character or reputation or educational background.

Mr. Chairman, I think that we ought to investigate what the meaning of loyalty is.

Mr. EDWARDS. Will you yield at that point?

Mr. DRINAN. Yes.

Mr. EDWARDS. I wonder if anybody ever answers no; that he is disloyal?

Mr. LAWN. May I answer that question? Not to my knowledge has anybody ever answered, "No, he is not loyal to the U.S. Government"? If I could get back, Congressman, Drinan, in 1974, Executive Order 11785 abolished the Attorney General's list of subversive organizations, so that is no longer a part of the investigations. But we know that on occasion, and this is where we refer to loyalty, certain groups and certain hostile foreign powers would attempt to place an applicant in Government service, and loyalty would include resolving if an individual was under such direction. We realize there are perhaps different degrees of loyalty. Perhaps with regard to patriotism there would be different interpretations, but in general I think we would mean loyalty to the U.S. Government.

Mr. DRINAN. The Republic got along pretty well until 1952 without that law, without making a personal request of the neighbors or the friends of former professors: "Is this man a loyal American citizen? Is he loyal to our institutions? I find it offensive, I think most people do, challenging the patriotism or the loyalty of another individual without any justification whatsoever, and the idea that the evidence that one puts forth is in the file forever. I would think that it is unreliable, and that it is irrelevant.

Mr. MULLEN. I think Congressman Edwards asked a very good question. As indicated by Mr. Lawn, who is our Section Chief of the Applicant Investigations Section, generally he would say no.

Mr. DRINAN. That is another reason why it is a bad question. That is not the way to find out. In any event, let me move on to another question.

Has anybody ever suggested that the FBI should in fact look into the financial standing and the sources of income? Is that duplication, when the White House or someone else does that? What is the origin and rationale of that division?

Mr. MULLEN. I will let Mr. Domzalski answer that question.

Mr. DOMZALSKI. If I can answer that, Congressman Drinan. The FBI has never been asked to look into that aspect of an individual's background. The financial examinations have always been done by the appointing authorities, either the Department of Justice or the White House. The only instances were, as Mr. Mullen referred to in the Rockefeller and Ford investigations, because of the unique position that they were to occupy. Since they were being appointed to the Vice Presidency of the United States, we were asked to do a complete financial audit, but essentially, it is not a task that has been given to the FBI. We have been asked to concentrate our investigation on character, reputation, associates, and loyalty, and not to cover his financial standing.

Mr. DRINAN. Let's take a for instance. If the U.S. attorney is appointing someone to be an assistant U.S. attorney, and this is an actual case of a constituent I spoke to yesterday, and he is about to undergo this massive FBI search, the U.S. attorney apparently is going to check up on his tax returns and not the FBI. Why not consolidate it?

Mr. DOMZALSKI. We furnish a request to the IRS to check these records for the Department. It is not an examination of the IRS returns itself. The IRS sends back generally a brief, one-paragraph report that the returns for 3 years have been examined and that there is no record of criminal or civil action or tax liens concerning them.

Again, we have been doing this as a request from the Department. We are in essence the middleman on it. We transmit the authorization. The individual has to sign a waiver before IRS will accept such a check, and we present that to IRS, and when their report is complete we transmit it to the Department of Justice.

At present, we are working on a procedure with the Department of Justice for them to deal directly with the Internal Revenue Service concerning those records and to eliminate the FBI from that function.

Mr. DRINAN. One last question. This is an authorization hearing, and in the fever for economy I guess we are supposed to be looking for appropriate ways by which we could cut back. On pages 20 and 21 of the authorization statement, the FBI or Justice is saying that they apparently don't see any way by which there could be decreased funding in this program. My last question: Is there any appropriate way by which we could suggest economizing or consolidation, some way by which some rational cut could be exercised?

Mr. GROOVER. Congressmen, in the 1981 request, the FBI is assuming that it will continue to have the responsibility to conduct those other direct funded, the ones we are asking funds for, investigations for the Department, for the White House, and for the congressional committees. Absent a reduction in those requests, we have no alternative but to seek the money.

Mr. DRINAN. What congressional committees bother you for an investigation?

Mr. GROOVER. We conduct investigations, and there is an entire list, if you would like to see it——

Mr. DRINAN. Which are the major committees, Intelligence?

Mr. GROOVER. Appropriations, Select Committee on Assassinations, House Subcommittee on International Organizations, House Permanent Select Committee, Senate Armed Services Committee, Senate Committee on Foreign Relations.

Mr. EDWARDS. Without objection, that list will be made a part of the record.

Mr. DRINAN. I think that is a good idea, Mr. Chairman.

Mr. EDWARDS. Will the gentleman yield for a question?

Is all that reimbursable?

Mr. DOMZALSKI. Those are not reimbursable, Mr. Chairman.

Mr. EDWARDS. In other words, we are getting that work in Congress for nothing?

Mr. DOMZALSKI. You are now. The FBI charter provides for reimbursements by congressional committees, however.

Mr. DRINAN. I thank the gentleman. I yield back the balance of my time.

Mr. EDWARDS. Mr. Sensenbrenner?

Mr. SENSENBRENNER. Yes. I am interested in knowing whether there have been any reductions in funding requests as the budget process goes from the bureaus and the Department of Justice to the OMB, from OMB to the President, and then ultimately on to Congress.

Mr. MULLEN. Mr. Groover will answer that question. This is in the area of applicant investigations, Congressman?

Mr. SENSENBRENNER. Yes.

Mr. GROOVER. There was a slight reduction at the department level, Mr. Sensenbrenner. We think, however, that we do have enough, at the current caseload, to handle them with the existing——

Mr. EDWARDS. Use the mike, please.

Mr. SENSENBRENNER. If I may ask the question, still in your fiscal year 1981 budget there is sufficient appropriations in case there is a change in administration, which would consequently mean a tremendous increase in the caseload of background checks for persons who would be applying for positions in the new administration?

Mr. GROOVER. The 1981 request is essentially the same as the 1980 request. There is no increase in funding. In the initial request, it was taken into consideration. By the time it got through the process, there was an elimination of 59 positions which would have handled any increased workload.

Mr. SENSENBRENNER. How many positions do you have in the total for applicant investigations?

Mr. GROOVER. We have for funded or nonreimbursable applicants, 475 full-time, permanent positions.

Mr. SENSENBRENNER. And 59—was that out of the base or was that just a denial of an increase?

Mr. GROOVER. Denial of an increase.

Mr. SENSENBRENNER. I would like to ask a couple of questions relative to the applicant investigation of the Secretary of the Treasury, which has become somewhat of a controversial issue over on the Senate side. I ask how it would be possible, after all of the allegations relative to potential violations of the Foreign Corrupt Practices Act were not uncovered during that applicant investigation.

Mr. MULLEN. As indicated earlier, Congressman, we do not go into the financial status or means of finances during our investigation.

Mr. SENSENBRENNER. The allegations are that the Textron Corp. bribed foreign government officials during Mr. Miller's tenure as chief executive officer. It does not involve Mr. Miller's personal finances. It

involves whether he was knowledgeable about a violation of the law that apparently occurred during this period he was the chief executive officer of Textron.

Mr. MULLEN. Right. You must keep in mind that these are still allegations, and during our investigation we again contacted over 70 individuals, including the chairmen of the board for 8 separate corporations, a U.S. Senator, and none indicated any difficulty in this area. I would hope that after interviewing or contacting 70 individuals and checking the many records that we did, we would have turned up such an allegation. We did not.

Mr. SENSENBRENNER. It seems to me that if you spent your time talking to individuals in the Textron Corp., they certainly were not going to admit to you as law enforcement officials of the Federal Government that a Federal law was possibly violated. And how would people outside the Textron Corp. know that Textron Corp. funds were being used to bribe foreign officials?

Mr. MULLEN. I don't know how they would know, but as I indicated, we talked to many, many individuals, and it is very difficult to have this type of activity occurring, in my opinion, and not have somebody know about it.

Mr. EDWARDS. Would the gentleman yield at that point?

Mr. SENSENBRENNER. Yes; I yield to the chairman.

Mr. EDWARDS. Were there allegations in the newspapers before the appointment was made that Textron had been possibly guilty of this misconduct?

Mr. MULLEN. No. Had there been allegations in the newspaper, Mr. Chairman, we would have included them and made them a part of our report.

Mr. EDWARDS. Was the company under investigation by any Federal agency?

Mr. MULLEN. Not to our knowledge, Congressman, and I have to emphasize here we are not conducting a criminal-type investigation when we are conducting an applicant investigation. We are trying to determine suitability for office, and we go into these investigations assuming that the individual is a qualified nominee. We are not going out talking to criminal-type informants to see if there is any criminal activity in these investigations.

Mr. SENSENBRENNER. Reclaiming my time, my reading of the newspaper accounts on the Textron matter indicates that there really was no doubt that the activity took place by the Textron Corp. The question that is decided relative to Secretary Miller is whether he knew about it.

Mr. MULLEN. That is right.

Mr. SENSENBRENNER. Now, since the applicant investigation of Secretary Miller took place in 1978, I am wondering if there was any investigation of potential misconduct on the part of the Textron Corp., by the Bureau that just did not get meshed in with the applicant investigation of Secretary Miller.

Mr. MULLEN. No, Congressman, If there had been an ongoing investigation, it would have been included in our applicant investigation, and would have been so reported.

Mr. SENSENBRENNER. I do think that it is important that potential nominees for high Government positions have as thorough a back-

ground check as is possible, so that the President will not be embarrassed by revelations in newspapers. I would just observe that I think in the case of the Textron relationship with Mr. Miller, the President was embarrassed by what appeared in the newspaper, and I would hope that the procedures would be tightened up sufficiently so that the President would have the knowledge of potential allegations of misconduct in his background report rather than picking up the newspaper somewhere and reading about it.

I yield back the balance of my time.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. Thank you, Mr. Chairman. I will continue with what the gentleman from Wisconsin said and make an observation. You can tell me if I am right or wrong. Background checks that you made on behalf of White House personnel or Cabinet officers, that is done under Executive order, is it not?

Mr. MULLEN. Yes, 10450.

Mr. VOLKMER. That is also basically by agreement with the White House, the President, and the Attorney General's Office?

Mr. MULLEN. That is correct.

Mr. VOLKMER. How it should be done. They can change that very easily, couldn't they?

Mr. MULLEN. They could.

Mr. VOLKMER. In other words, if the President really wanted additional checks on people, he could do that without any of us worrying too much about it?

Mr. MULLEN. They could request additional checks, yes.

Mr. VOLKMER. That would be done?

Mr. MULLEN. It would be done.

Mr. VOLKMER. In other words, the way I look at it, as a person in Government, the separation of powers, to me that is up to the President whether he does it or not and whether he has any checks or not. I think that is where the responsibility lies. Then if he didn't, it would be up to the Senators to confirm. If they wanted something, they could request it and they could get additional too, could they not?

Mr. MULLEN. That is correct. As you are probably aware, the FBI conducts the investigation, and even if we should find in investigation that the individual is not qualified for the position, that is not a decision for the FBI to make.

Mr. VOLKMER. That is correct.

Mr. MULLEN. The agency can still hire as they wish.

Mr. VOLKMER. Thank you.

Now I have information here that you have reimbursable applicant investigative work. I see an estimate here of about $5 million. Is that right?

Mr. MULLEN. Mr. Groover can answer that question.

Mr. VOLKMER. That is reimbursable?

Mr. GROOVER. I think that is the estimate.

Mr. VOLKMER. I agree it is an estimate, but where does most of that come from or where does that money come from? What agency, department, private or what? I have heard of a long list. You might just submit it for the record, but I would like to know.

Mr. GROOVER. There are just a few agencies. Most of it is from the Administrative Office of U.S. Courts.

Mr. VOLKMER. Is that on the judiciary or what? Does anybody know?

Mr. DOMZALSKI. If I could answer that, Mr. Congressman, the investigations we do for the Administrative Office of the Courts concern candidates for position of U.S. magistrate, bankruptcy judge, Federal circuit court and district court judge, executive, probation officer, pretrial services officer, and Federal public defender.

Mr. VOLKMER. Those are reimbursable?

Mr. DOMZALSKI. Yes.

Mr. VOLKMER. Who else?

Mr. GROOVER. Department of Energy, Nuclear Regulatory Commission, and administrative appointees.

Mr. VOLKMER. Is that reimbursable by statute or by agreement, do you know?

Mr. GROOVER. By agreement.

Mr. VOLKMER. Can you tell me as to whether those background checks are for people that are involved in the NRC in policy decisions or are they just physicists or engineers? Can anybody tell me that?

Mr. DOMZALSKI. Essentially, they are positions which the Department of Energy and Nuclear Regulatory Commission classify as important and sensitive. They are not just the top policymakers, but they are people who will have access to the most sensitive atomic energy data.

Mr. VOLKMER. Information?

Mr. DOMZALSKI. Yes.

Mr. VOLKMER. So you wouldn't want that sent out willy-nilly to anybody and everybody?

Mr. DOMZALSKI. Yes, sir.

Mr. VOLKMER. I understand before I got here there may have been some discussion on the question of the loyalty oath, or loyalty to the U.S. Government. Have you had anybody that has ever had to take that and tell you that they thought it was an affront to them, that they should never have to do things like that? Do you know of anybody that has ever done that?

Mr. MULLEN. No, Congressman, I do not.

Mr. VOLKMER. It hasn't created any great hardship on anybody, has it, to do that?

Mr. MULLEN. It has not.

Mr. VOLKMER. I yield back the balance of my time.

Mr. EDWARDS. Thank you.

Mr. Mullen, you spend about $18 million a year in this program. Do your clients have any complaints about the work that you provide in these investigations?

Mr. MULLEN. No, Mr. Chairman, we have had no complaint.

Mr. EDWARDS. Do the agents do other work, other than applicant work?

Mr. MULLEN. Yes; an agent could be assigned to an applicant squad. Normally, we try to structure our programs fieldwide as thay are structured at headquarters. For example, as I indicated at the outset, Mr. Lawn is in charge of the Civil Rights and Special Inquiry Section. We may have agents on a squad working on civil rights matters also, and possibly some other violations, in additional to applicant investigations, depending on the size of the field office.

Mr. EDWARDS. Do some of the agents get stuck in this work?

Mr. MULLEN. No; in many offices we do put our younger agents, our newer agents, on this type of work, as a means of learning to investigate, learning to interview, and learning their way around the city It is not the most preferable work for an FBI agent. Most would rather be out investigating criminal matters. At headquarters in Mr. Lawn's section, the applicant—we do need some expert people in this area such as Mr. Domzalski, but after approximately 1 year we normally transfer an agent to other responsibilities.

Mr. EDWARDS. In the FBI school for new agents, is a certain amount of time dedicated to training FBI agents in applicant investigations?

Mr. MULLEN. Yes; there is a block of instruction dealing with applicant investigations.

Mr. EDWARDS. A specific course?

Mr. MULLEN. Not a course per se. I don't know the exact amount of time dedicated. I can determine that for you, Congressman.

Mr. EDWARDS. How many hours, we would like to know.

Mr. MULLEN. Yes; it is definitely a part of the instruction, but I just don't know the amount of time dedicated.

Mr. EDWARDS. Are applicants for employment with the FBI ever submitted to lie detector tests?

Mr. MULLEN. No.

Mr. EDWARDS. When the agents are out investigating, making these background investigations either for the Department of Justice or for another agency, the agents will say to the person being interviewed that so-and-so is under consideration for a Federal job, or will they be specific?

Mr. MULLEN. They would be specific as to the nature of the position. Jack, do you want to elaborate on that?

Mr. LAWN. Yes, sir.

Mr. Chairman, in reference, for example, to inquiries done for the White House, very often the FBI is not aware of the particular position for which the individual is being screened. Therefore, we would not be in a position to tell the persons with whom we are in contact the specific position for which that the individual is being considered.

Mr. EDWARDS. A person came to my office the other day, and said that he or she 25 years ago or 30 years ago had been a radical or whatever people described activitists as in those days, and that the FBI within the last year or so had gone, an agent had gone to her place of employment, which was a university, and said that she was under consideration for a Federal appointment, and would like to know information about this particular person, and so forth. She said it damaged her reputation rather severely because there was no appointment, as it turned out, and when people asked her about it, she just shrugged and she said, "Well, then, why was the FBI making these inquiries?"

My question to you is, do some of these agents in general investigations that are not applicants use this pretext that this person is under consideration for a Federal appointment, will you tell me about this person, when actually it is not true?

Mr. MULLEN. No; we do not do that, Mr. Chairman, and if you would make the specifics of this case available to me I will check further. Would there be such a situation?

Mr. LAWN. Mr. Chairman, I believe I am aware of that particular situation. In that particular case I believe that was done. However, it was done in error, and an administrative inquiry was conducted by the FBI, and that particular agent received some administrative censure for that activity.

Mr. EDWARDS. I am pleased to hear that, because it really isn't appropriate.

Mr. MULLEN. And it is not policy.

Mr. EDWARDS. My last question for this round is, do you find any conflict in organizations, in an organization that is primarily a police organization, and the agents are generally doing that kind of work and like to do that kind of work, criminal investigations? Do you have to put on another hat, two or three times a month or whatever, and become personnel investigators? Is it appropriate? Do you see any conflict there?

Mr. MULLEN. No; I see no conflict, Mr. Chairman. In fact, a trained investigator conducting an applicant investigation can usually remain alert or spot a possible difficult area. We have had no difficulty whatsoever with this, and as indicated, it is of value to us as a means of training our newer and younger agents. It has not been a problem for us.

I know you are probably recalling your days as an FBI agent. We do not put agents on applicant work as a means of punishment or anything like that. We recognize that they are very important investigations, and we put put some of our better agents into this type of work.

Mr. EDWARDS. I will say this, that Chairman Rodino assigned me in the confirmation proceedings of Mr. Rockefeller a number of years ago to examine the report, and the investigative work that was done by the agents in connection with the Goldberg book was really remarkable, and I complimented the Bureau at that time on that work and I will again. It was a most comprehensive report, and the skill with which the agents operated and traced that book appropriately was very good.

Mr. MULLEN. Thank you.

Mr. EDWARDS. Mr. Sensenbrenner?

Mr. SENSENBRENNER. I have no further questions.

Mr. EDWARDS. Mr. Volkmer?

Mr. VOLKMER. I have no further questions.

Mr. EDWARDS. Mr. Drinan?

Mr. DRINAN. In your testimony on page 3 you indicated that individuals signed consents prior to the conducting of a background investigation. Does this apply to all background investigations, or is there something specific about the Presidential-type investigations?

Mr. LAWN. No, sir. Whenever a background investigation is conducted, the individual will sign a waiver. If the investigation is being done in-house, that if, if it be an employee for employment in an FBI, the waiver is signed. If it were to be done for the Department of Justice, the Department of Justice has the individual sign the waiver, and the same is true for the White House appointees.

Mr. DRINAN. How about for the NRC people and the rest of those reimbursable; do they sign a same or similar form?

Mr. LAWN. Yes, sir, a waiver is signed by all.

Mr. DRINAN. What is it a waiver of, Privacy Act considerations?

Mr. LAWN. Yes, sir. We have copies of each of the particular waivers of which we speak.

Mr. DRINAN. Could we have them and make them a part of the record, then?

Mr. LAWN. Yes, sir.

[Insert provided to committee staff member at hearing.]

Mr. BREEN. In these background investigations, is there a standard list of questions in the manuals or other procedures that you have for asking those that are interviewed with regard to applicants?

Mr. MULLEN. There is a standard list of questions, but standard areas, the character, reputations, associates, and loyalty of an individual, but no standard preprinted list of questions. It will vary from position to position. The questions probably would be more directed to the nature of the position being sought.

Mr. BREEN. I suppose it is likely that a special agent's first job ever for the FBI in the field might be conducting an interview for a background investigation?

Mr. MULLEN. That is very likely, but as Mr. Lawn is pointing out, and as I was going to state, if it is a very critical position, we would perhaps use an agent with some experience.

Mr. BREEN. Let's say it is for a clerical personnel. The questions are still basically the same. Doesn't that person have a little card written down to make sure he does not ignore some important question?

Mr. MULLEN. No; we are firmly convinced that a trained investigator will ask the proper questions.

Mr. BREEN. When you are doing background investigations, I know you don't go into the tax returns or that kind of material, but do you do credit checks of any kind; that is, do you check with Dun & Bradstreet? Is that a normal part of the procedure of a background investigation?

Mr. MULLEN. Credit checks are. That is a part of the waiver. The waiver form contains a release of credit records. We would go to Dun & Bradstreet if the individual was associated with a business that may require a Dun & Bradstreet check. We don't do it in every single case.

Mr. BREEN. What if the person had been in business in the past but was no longer in the business, maybe doing something else; would you check Dun & Bradstreet or similar credit-type organizations to determine the past financial credibility or whatever?

Mr. MULLEN. Joe, would you answer that one?

Mr. DOMZALSKI. No; I don't think normally we would necessarily go to Dun & Bradstreet on every candidate. If a situation came up where we thought there was information there that could help us in the investigation, then we might initiate a check. But as a routine check, no, we don't have Dun & Bradstreet done on everything. Credit records, yes, but not Dun & Bradstreet.

Mr. BREEN. If some source, however, had said that there was some financial difficulty in the past, then you might check that out as a normal lead?

Mr. DOMZALSKI. We might try and check it out to see what the general reputation was.

Mr. BREEN. Who grants the security clearances in the FBI? Does the FBI do that or the Department of Justice?

Mr. MULLEN. You mean for FBI personnel?

Mr. BREEN. Yes.

Mr. MULLEN. We do have an FBI classification officer, who in giving the top secret and secret clearances handles the in-house FBI clearances, but we do not give a clearance to any other agency.

Mr. BREEN. So the director in fact is the issuer of the security clearance?

Mr, MULLEN. That is correct, or his designated official within the FBI.

Mr. BREEN. In the rest of the department that is issued by Department of Justice, by the Attorney General?

Mr MULLEN. A similar official within the Department of Justice.

Mr. BREEN. Do your records show whether or not a person is granted a clearance in either the Department of Justice or any other agency?

Mr. MULLEN. I will let Mr. Domzalski answer.

Mr. DOMALSKI. No; we don't get any feedback from the department or the White House or anyone as to whether they actually bring the person on board or grant him the clearance as a result of our investigation.

Mr. MULLEN. In the White House cases you would probably know if it were a Cabinet secretary, I assume?

Mr. DOMZALSKI. Yes; from public documents we would be able to tell whether they were appointed or not.

Mr. BREEN. Other agencies do background investigations, OPM and military and what have you. I know there has been some problem for the past years about one agency not accepting the background investigative work done by another agency. Is that still the case, where one agency in effect ignores the work of the other agency, and starts an investigation over again?

Mr. DOMZALSKI. The way security procedures are set up in the Government right now, each agency is the judge of whether it will grant a security clearance to someone. If a prior investigation has been done, and an agency does not feel it is adequate, then it won't use that as a basis for its judgment, but it is an individual agency decision whether to accept it or not.

Mr. BREEN. Do the agencies or the people that are responsible in those various agencies talk to each other about these problems, to either standardize or improve procedures so that there is reduction in the duplication here?

Mr. DOMZALSKI. There is an interagency committee established right now that is looking into those very problems, trying to set up standards for background investigations, for determining cost factors in these investigations, for establishing the criteria for granting security clearances and the various levels at which they would be established, but at the moment this is primarily in a working group stage, and it has not come up with any policy determinations yet.

Mr. BREEN. Who establishes that group?

Mr. DOMZALSKI. It was initiated by the Department of Defense and OPM joined with them. It began as a result of a GAO report last year, which was critical of the divergence of efforts in this area.

Mr. BREEN. You are part of that group?

Mr. DOMZALSKI. Yes.

Mr. BREEN. Or the FBI is?

Mr. DOMZALSKI. Yes, we are on various committees.

Mr. BREEN. Is it making any progress?

Mr. DOMZALSKI. At the moment we are moving along with it. We are having a lot of discussions as to what is necessary and what is not necessary, and how large a scope of investigation is really essential. We are having some frank exchanges on that, but as I say, we haven't really come out yet and said this is what an investigation should be.

Mr. BREEN. Is the mandate of this group to come up with some recommendation?

Mr. DOMZALSKI. The mandate is to come up with a recommendation as to what the standard investigation should be for the Federal Government, and then to circulate that to the agencies and see if they agree with that or whether they have any opinions on it.

Mr. BREEN. You said frank discussions. Doesn't that normally mean people are fighting with each other?

Mr. DOMZALSKI. There are a lot of differences as to how thorough an investigation is necessary, and what all needs to be covered.

Mr. BREEN. Some of the work you do for the White House appears to be for nonpolicy-type people; that is, people that are associated with the operation of the White House, its care, cleaning, cooking, and what have you. Is that appropriate work for the FBI to be doing, do you think, or could it be done by somebody else? Mr. Mullen?

Mr. MULLEN. I would like to answer that. When you are considering the safety and the well-being of the President, I think it is appropriate for the FBI to be doing that work.

Mr. BREEN. Doesn't the Secret Service have even more sensitive responsibility in that area than you do, at least personally? Do they have the capability to do some of the work that would be necessary just for the White House?

Mr. MULLEN. They certainly would. They could perhaps handle it as adequately as we handle it.

Mr. BREEN. It seems as Presidential campaigns go along, people drop out, there are more and more agents freed up. I really don't know what they do, but it seems like there are people that are available at least theoretically that could do some of this work that is directly related to the White House?

Mr. MULLEN. That is correct, although we do have access to the records, the Identification Division records and everything right at the FBI, but there is no question that your point is well taken.

Mr. BREEN. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Boyd?

Mr. BOYD. Thank you, Mr. Chairman.

Mr. Mullen, I would like to tie up some loose ends that were left by Mr. Sensenbrenner's first question with regard to Secretary Miller. Was the FBI aware of the bribery efforts on the part of Textron at the time Secretary Miller was being confirmed?

Mr. MULLEN. No, I am certain, and I say this without having examined the record, but based on my knowledge of how the Criminal Investigative Division functions. If we were aware of that information, it would have been reported as part of our investigative report, and if the allegations had some basis in fact, we would have conducted criminal-type investigations. To my knowledge we were not conducting such an investigation at that time.

Mr. BOYD. You have not yet conducted an investigation with regard to Secretary Miller's possible knowledge of the Textron bribery efforts?

Mr. MULLEN. That is correct.

Mr. BOYD. Even though those bribery efforts are now public knowledge?

Mr. MULLEN. We have not been given any information indicating there was some basis to open a criminal investigation. Let's keep in mind they are allegations.

Mr. BOYD. I am confused then. Are you saying that so far as you know there were no bribery efforts on the part of Textron?

Mr. MULLEN. My only knowledge is what has been in the newspaper, and they are allegations, so I can't say whether there were or were not. What I am saying, is that we have not had adequate information furnished to us which would warrant our going forward with a criminal investigation.

Mr. BOYD. You mean—or let me ask you the question in a different way. Recently there was a letter forwarded to the Department of Justice, specifically to the Attorney General, by a number of Republican Members of the Congress requesting that a special prosecutor be appointed to look into the background with regard to Textron activities by Mr. Miller. After some consideration, Attorney General Civiletti decided to decline that request.

Mr. MULLEN. That is correct.

Mr. BOYD. Were you in any way involved in seeing what degree of merit that investigation might have?

Mr. MULLEN. No, I was not in any way involved in that.

Mr. BOYD. Was the FBI involved, Mr. Mullen?

Mr. MULLEN. Had we been involved, I would have been aware of it.

Mr. BOYD. Thank you.

What is the average turnaround time for your standard political appointive background investigation?

Mr. DOMZALSKI. There are a number of deadlines that we use in connection with these cases. Primarily, on a Presidential appointment we give the field 7 days in which to complete the investigation. Judicial appointments are generally set for a 10-day deadline, and the other appointments within the Department of Justice and within the White House usually have about a 15-day field investigative deadline.

Mr. BOYD. That deadline is set by the White House?

Mr. DOMZALSKI. That is our internal deadline. The White House wants the information back as quickly as we can get it.

Mr. BOYD. So about a 10-day period for judges is sufficient time to look into their background and suitability for sitting on the bench?

Mr. DOMZALSKI. Yes, it is, because when the investigative request gets to the field, they assign sufficient manpower to delve into the background thoroughly. If a problem comes up, and we need additional time, then we will present the problem to the Department. There has never been any problem when we have an allegation that we want to run out further. The Department wants it run out thoroughly rather than to arbitrarily meet a particular timeframe.

Mr. BOYD. Thank you. I have no further questions.

Mr. EDWARDS. When this consent document is signed, are fingerprints taken of the applicant?

Mr. DOMZALSKI. The agency, when it submits the background material concerning an applicant, will usually provide fingerprints, the standard Government questionnaire, the SF–86, and necessary waivers for release of records information.

Mr. EDWARDS. Mr. Volkmer?

Gentlemen, thank you very much.

Mr. MULLEN. Thank you, Mr. Chairman.

[Whereupon, at 10:40 a.m., the subcommittee adjourned.]

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